



More specifically, I believe that the IQC might not have correctly assessed the shortcomings that could have probably led to the dismissal of the assessee also according to Art. 61, par. 5 of the Vetting Law, besides being relevant to a proper evaluation of the Proficiency Assessment.

The IQC decision acknowledges the existence of several errors in the exercise of the judicial functions committed by the assessee, which will be listed below:

- 1) **With regards to the analysis of the relevant case, following the complaint filed by B.M,** the IQC decision states that

*“After administering the documentation of the case and heard the assessee, the Commission's Adjudication Panel found that in the solution of this case, in the assessment of the circumstances and facts that have to do with the due legal process, based also on the assessment made by the Administrative Court of Appeal, **the assessee showed shortcomings in the application of the procedural law**” (par. 6.1 of the IQC decision – bold added);*

- 2) **With regards to the analysis of the relevant case, following the complaint filed by I.K,** the IQC decision states that

*“The First Instance Administrative Court continued the trial on the basis of a lawsuit which in terms of Article 117 of Civil Procedure Code is invalid as it was not signed by the plaintiff but by an attorney who was not authorized with a power of attorney to perform this action. From the acts in the file, **serious procedural violations committed by the assessee in the trial of this case are found**, and for these reasons the Administrative Court of Appeal returned the case for retrial to the First Instance Administrative Court of Tirana to be adjudicated by another panel of judges.*

***The Adjudication Panel of the Commission assesses that the lack of procedural legitimation (legitimation ad processum) is assessed by the court at the preliminary stage of the process, meaning that the judge during the preparatory session must verify the acts related to the procedural legitimation of the parties and in case of identifying flaws in the lawsuit, return the documents to the claimant and set a deadline for completing these flaws in accordance with article 25 paragraph 1<sup>1</sup> letter a of the special law no. 49/2012 as well as Article 154 of the Code of Civil Procedure”** (par. 6.2 of the IQC decision– bold added);*

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<sup>1</sup> For the conduct of the trial, according to the principle of a due legal process and within the fast and reasonable deadlines, the presiding judge, within 7 days from the date of filing the lawsuit, performs the following actions: a) Requests the claimant to complete the flaws of the lawsuit, giving him a deadline of up to 10 days. When the claimant does not complete the defects of the lawsuit, within the specified period, the judge gives a decision for the return of the lawsuit and the acts, which are attached to it. A separate appeal is allowed against this decision.

Article 154 of the Criminal Procedure Code ‘When the claim does not meet the conditions mentioned in this chapter, the sole judge returns it to the claimant at the time of its presentation or he is notified in writing to complete the flaws and, after the date of presentation has been noted in the claim, a deadline is set for completing the flaws. Until this date, the lawsuit remains without action. Code of Civil Procedure ‘When the claimant does not complete the deficiencies within the specified deadline, the claim is said not to have been filed and is returned to the claimant along with other documents. A separate appeal can be made against the decision of the sole judge to return the lawsuit claim.

- 3) **With regards to the analysis of the relevant case, following the complaint filed by E.H,** the IQC decision states that

*“It results that the assessee adjudicated a request of a special nature, such as securing a lawsuit in camera based on the acts, and he **did not verify the fulfillment of the requirements stipulated under Article 176 of the Civil Procedure Code and the requirements stipulated under Article 25 of Law no. 49/2012**”* (par. 6.3 of the IQC decision – bold added);

- 4) **With regards to the analysis of the relevant case, following the complaint filed by L.M,** the IQC decision affirms that

*“[...] the Adjudication Panel assesses that the assessee failed to properly implement the procedural law and the material law”* (par. 6.5 of the IQC decision– bold added).

- 5) **With regards to the analysis of the relevant file, following the complaint filed by B.C,** the IQC decision acknowledges that

*“The Adjudication Panel of the Commission evaluates that in addition to the specifications of the claimant in the lawsuit, based on the Article 16 of the Civil Procedure Code<sup>2</sup>, and the Unifying Decision of the United Chambers of the High Court, No. 3/2012, “The Court discovers the ground of the lawsuit filed by the claimant by analysing the lawsuit in its entirety and it is not limited to the legal provisions that are referred by the claimant in the introduction of the lawsuit. It could happen that the claimant refers the legal provisions by mistake, but once the Court reads the lawsuit, it is clear the right that the claimant asks to protect. In this case the Court should resolve the case by conforming to the ground that results from the examination of the lawsuit in its entirety, by establishing the link between the facts that are claimed by the claimant that have happened and the rights or interests that he claims that are violated”. **The judge should not forget the principle that the judge is familiar with the law, and he should provide the right solution to the case that is assigned to him**”* (par. 6.6 of the IQC decision – bold added).

The IQC implicitly acknowledges the existence of professional errors also with regards to the relevant case analysed after the complaint filed by the Financial Supervisory Authority (refer to par. 6.4 of the IQC decision).

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<sup>2</sup> The Article 16 of the Civil Procedure Code: “The Court resolves the dispute in accordance with the legal provisions and other norms in force, which are binding to be implemented from it. The Court shall make an accurate evaluation of the facts and the actions related to the dispute, not bound to the evaluation, which may be proposed by the parties. Nevertheless, the Court cannot change the legal basis of the lawsuit, if not requested by the party”.

It appears that the shortcomings ascertained through the analysis of the relevant files which were examined after the submission of the complaints were not properly analysed by the IQC - within the framework of the proficiency assessment against the legal standards provided by Constitutional Court decision No. 2/17 which the International Observer would like to recall. In the said decision, the Constitutional Court clearly affirmed that:

*“54. With regard to the criteria and standards for carrying out the verification of the professional skills, the Court deems to highlight the importance of guaranteeing that the legal opinions expressed by the judges [...] which may be considered simply ‘inaccurate’ by the controllers, shall not be a cause for a negative outcome. It is very important that the negative evaluation should be awarded only in the event of **essential and serious mistakes and/or if there exists a clear and serious series of wrong adjudications, indicating the absence of professional skills** (see also the Opinion CDL-AD (2016)036 of the Venice Commission) [...]”* (bold added, Constitutional Court Decision No. 2/2017).

It must be pointed out that, with regards to this assessee, there were additional

*“[...] 17 other complaints [...] filed with the Commission, which the Adjudication Panel examined and reached the conclusion that they did not meet the criteria provided by the Article 53 of the Law No. 84/2016.”* (par. 6.6 of IQC decision)

and the IQC decision affirms, in the immediate subsequent paragraph that

*“After having analysed the above-mentioned complaints according to the Law No. 84/2016, and the explanations provided by the assessee, the Commission assessed that based on paragraph 4, of the Article 72, of the Law No. 96/2016, “On the status of Judges and Prosecutors in the Republic of Albania”, **it does not have the powers to judge on the merits of the cases, powers, which are conferred to a higher court, and by considering the Decision No. 2, dated 18.01.2017, of the Constitutional Court, it assesses that the violations that are ascertained do not amount to the extent to be considered as a ground for dismissal of the assessee from office.**”* (par. 6.6 of IQC decision – bold added).

However, the latter sentence does not appear very clear, or at least it is not clear which cases it refers to.

If it refers to the analysis of the specific cases listed in this concurring opinion (scrutinized after the complaints of B.M, I.K, E.H, L.M and B.C), that statement is not true, because several professional mistakes made by the assessee were of procedural nature, according to the wording of the same IQC decision.

If, instead, the latter statement refers to any of the underlying cases following the other 17 complaints, that could be nevertheless an additional element to assess the possible endemic presence of “*a clear and serious series of wrong adjudications*” - due to the wrong application of the procedural law (thus, not entering into the merit of the subject matter which was adjudicated) - that derives from the analysis of those specific cases listed in this concurring opinion.

At least, the IQC should have considered the aforementioned situation to determine whether – if not on the proficiency assessment – the assessee could also incur into a dismissal ex art. 61(5) of the Vetting Law, together with the other elements ascertained in the process.<sup>3</sup>

## CONCLUSIONS

Considering the above, it is the International Observer’s concurring opinion that the IQC erred in not properly considering the shortcomings derived from the analysis of the cases following the complaints submitted against the assessee, within the framework of the proficiency assessment or (above all) of an eventual dismissal also ex art. 61(5) of the Vetting Law.

In this International Observer’s view, it cannot be excluded that the said shortcomings, together with the other elements determined by the IQC could bring to a dismissal – at least, also - ex Art. 61(5) of the Vetting Law.

Considering the above, this International Observer would like to refer the matter to the discretionary power of the Public Commissioner, bearing in mind that – for the evaluation of the existence of the elements which would ground a dismissal also ex art. 61(5) of the Vetting Law - it is the Public Commissioner that, according to the provisions of the Annex to the Constitution (Art. C,2) “represent the public interest” and it is better placed to consider the existence of an eventual breach of the public trust in the case at hand that would justify an appeal on the point.

Respectfully submitted,

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<sup>3</sup> See, e.g., the part in the IQC decision dealing with the conflict of interest as follows:

*“[...] 2.39. In conclusion of the above analysis, the Adjudication Panel concludes that the assessee was in a situation of conflict of interest when he adjudicated three cases in which “\*\*\*” shpk company was a litigation party, and this places the assessee in a situation provided for by article 33, paragraph 5, letter d of Law no. 84/2016”.*