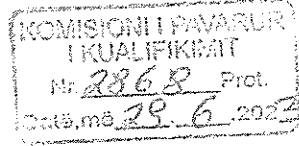


International Monitoring Operation  
Project for the Support to the Process of Temporary  
Re-evaluation of Judges and Prosecutors in Albania

Prot. No. 404



Tirana, 29/06/2023

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

Case Number DC-P-TIR-1-48

Assessee Ylli BASHAJ

### DISSENTING OPINION OF THE INTERNATIONAL OBSERVER

Pursuant to Art. 55, par. 5 of Law No. 84/2016 *On the Transitional Evaluation of Judges and Prosecutors in the Republic of Albania* (hereinafter "Vetting Law"), I hereby file my Dissenting Opinion on the Independent Qualification Commission's (hereinafter "IQC") decision which confirmed in office the assessee Ylli BASHAJ.

More specifically, the International Observer would like to point out some issues that should be under the Public Commissioners' (further "PC") attention for them to appeal the case.

**ISSUES CONCERNING THE ASSETS ASSESSMENT**

*1) With regards to the apartment of 93.09 m2*

The IQC decision which confirmed the assessee in office is elaborated under the assumption that the price for the apartment of 93.09 m2 was 28.000 USD. However, the existence of this fact had to be assessed more carefully and should not have been taken as an assumption for the underlying IQC reasoning and conclusions.

First of all, this International Observer would like to point out some issues regarding the loan of USD 8.000 from Italian-Albanian Bank (currently Intesa San Paolo Bank) on 01.02.2001.

In his explanations to the results of investigations, the assessee has been persistent in stating that he has paid – for the apartment of 93.09 m2 - only USD 28.000 to the company in two trenches: the 1<sup>st</sup> trench of USD 20.000 was allegedly paid in the company’s cash box, whereas the 2<sup>nd</sup> trench of USD 8.000 was allegedly paid through the bank loan.

This International Observer believes that to determine whether the loan of USD 8.000 should be included or not in the financial analysis as a source - and/or if only USD 28.000 were paid for the apartment and not USD 36.000 - the following evidentiary elements should be considered, as they look quite contradictory, and the information contained in them is not consistent to each other.

- a) **1<sup>ST</sup> DECLARATION OF THE ASSESSEE in 2004**, where the assessee reported the following:

Description	Surface	Price	Source
<i>Apartment</i>	93 sqm	USD 28.000	USD 13.000 – SAVINGS
			USD 2.000 – K. B. (brother)
			USD 2.000- H. B. (cousin)
			USD 1.500 – S. V.
			USD 1.500- E. H.
			USD 10.000 – LOAN FROM BANK IN 2001

b) VETTING DECLARATION,<sup>1</sup> where the assessee reported as follows:

Description	Surface	Price	Source
Apartment	93 sqm	USD 28.000	USD 10.000 – SAVINGS
			USD 10.000 – IN THE FORM OF DEBT BORROWED FROM RELATIVES AND FRIENDS
			USD 10.000 – LOAN FROM BANK IN 2001

- c) **SALE CONTRACT NO. REP., KOL., DATED 27.12.2000** mentions that the price for the apartment of 93.09 m2, in the amount of USD 28.000, was paid completely outside the notary office;
- d) **LOAN CONTRACT NO. REP., KOL., DATE d01.02.2001:** the documents related to the loan of USD 8.000 for the purchase of the apartment reports that the said apartment was offered to be mortgaged in for the loan;
- e) **REPLY FROM SUPERBETON MATI SHPK TO IQC:** The company, in its reply, has stated that the apartment of 93.09 m2 was purchased for USD 28.000. Due to the long time that passed, the only documents that could be obtained were the sale contract No. REP., KOL., DATE 27.12.2000, and the certificate of ownership under the name of the construction company, in which it is reported that “[...] The transfer of ownership title and the registration as per sale contract no. REP., KOL., DATE 27.12.2000 was performed after the fulfillment of the registration initially under the ownership of S M Shpk on 17.11.2000 [...]”;
- f) **REPLY FROM S M SHPK TO ASSESSEE:** In the replies to the questionnaire dated 31.10.2022, confirmation/certificate Prot. no. , dated 03.11.2022 of the company “S M sh.p.k. - which was issued in response to the assessee’s request, the company (unlike the information sent to the IQC) stated that the buyer of the apartment paid in favor of the company the total amount of USD 28.000, of which USD 20.000 were paid to the company’s finance office while the remaining USD 8.000 were settled through the bank;

<sup>1</sup> The assessee has “reviewed” what he declared in the Standard Questionnaire, claiming that he had submitted the Vetting Declaration without checking it properly after printing it out! He has stated that the loan amount of USD 10.000 was composed of the main amount of USD 8.000 and that the remaining part were the interest to be paid.

- g) **BANK STATEMENT ATTACHED TO THE CERTIFICATE FROM INTESA SAN PAOLO BANK (FORMER ITALIAN-ALBANIAN BANK) dated 29.09.2020:** The bank statement provides evidence that the amount of USD 8.000 were disbursed and, then, transferred to the construction company's account within the same day, meaning 13.02.2001; however this date is almost two months later than the information reported in the sale contract (which reports the settlement of USD 28.000).

Considering the above, the International Observer believes that with regards to the price of the apartment the evidence is very contradictory. Nevertheless, having in mind the content of the sale contract (stating that the price was paid completely outside the notary office) and the bank statements (testifying the disburse of 8.000 USD), this International Observer believes that the real price that should be considered for the apartment is USD 36.000 and NOT USD 28.000.

The replies to the questionnaire dated 31.10.2022 and the feedback provided to the assessee by SHPK cannot be considered as reliable evidence. It is important to note that the confirmation/certificate Prot. no. , dated 03.11.2022 of the company "S" sh.p.k. is signed by the administrator of the company whose name is B.

Worth of note, it appears that the assessee dismissed some charges against B. in 2015. Case file No. 4, related to the criminal proceeding no. /2015 of the Prosecutor's Office at the Court of First Instance in Tirana (registered for the criminal offense "Production and sale of narcotics", provided for in article 283/1 of the Criminal Code of the Republic of Albania), was referred by the IQC in the results of investigation but not referred – nor properly recalled - in the IQC decision.<sup>2</sup> In light of the above, S.'s information cannot be considered as reliable, above all considering the fact that their content contradict the content of the information/replies previously provided to the IQC.

Therefore, this International Observer believes that the assessee has paid the sum of 28.000 USD to the company outside the notary office (as stated in the contract) AND also the 8.000 USD received as a loan. It was indeed not rare, in Albania, that the declared value in the contract of sale of a real estate is lower than the real value agreed between the parties, and that the buyer gets financed from the bank of a part of the price declared in the contract which is not, however, the total price paid to (and agreed with) the construction company, often through resorting to cash money.<sup>3</sup>

Considering the above, the fact that the IQC concluded in the sense that the total price of the apartment was 28.000 USD, out of which 8.000 settled through a loan, cannot be shared,

<sup>2</sup> IQC made also reference, in point 1.15 of the results of investigations sent to the assessee, of this case, in the part where they were investigating the existence of a conflict of interest.

<sup>3</sup> It cannot be excluded that, to facilitate the registration of the apartment as collateral, the sale contract had to be registered in the cadaster office prior to the real payment. Therefore, it could also be possible that the sale contract for the payment - signed in December 2000 - might be fictitious.

as it is a conclusion which cannot be reached according to a proper evaluation of the available evidence.

**2) Regarding the loans/debts taken from relatives and friends**

The International Observer would like to point out that besides the content of the Vetting Declaration and of the Periodical Annual Declarations, there is no reliable documentary evidence that would support the existence of loans received by H. B. (USD 2.000), S. V. (USD 1.500) and H. H.

Besides that, it appears that the IQC is using as evidence for these loans the fact that H. B., S. V. and H. H. had the financial capability to provide them. Nevertheless, it must be pointed out that the IQC investigation on the issue is not thorough, and it is rather insufficient and inaccurate. More specifically, it seems that the IQC has determined the financial capacities of the lenders by deducting only living costs from their incomes. IQC has neither enquired nor investigated if the lenders had children, if they purchased real estate or made other investments, nor did they check whether they had other financial obligations or expenses for their families. In such a situation, it is difficult – if not impossible – to logically share the IQC conclusions in terms of congruency of the financial capability of the lenders for the loans which were provided to the assessee, irrespective of the numerical amount.

The absence of the non-declaration of the eventual debt repayments (had the loans been granted to the assessee, or had there been a financial capability of the lenders - which things are, as said doubtful) is an additional inaccuracy, despite of the assessee's explanations.<sup>4</sup>

**3) Studies of assessee's daughter in Italy:**

It must be noted that the bank statements provided by assessee from Intesa San Paolo Italy are not in the form prescribed by the law to be admitted and considered as reliable evidence in this proceeding (not legalization with, e.g., apostille stamp)<sup>5</sup>; hence, the content of the

<sup>4</sup> With regards to the accuracy of the Vetting Declaration, the mental element is not relevant. The IQC seems to condone the assessee for his negligence in drafting the Vetting Declaration, but it is important to remind, on the point, the relevant AC jurisprudence in AC decision 1/2021 ( ), where the AC stated that:

"24.1 [...] the constitutional and legal provisions that govern the responsibility for accurate disclosure do not stipulate that the sufficiency and accuracy must analyze the assessee's intentions/goals. Specifically, Article D, paragraph 5 conditions the presumption in favour of the disciplinary dismissal sanction and the obligation on the assessee to prove the contrary through attempts to *inaccurately represent the assets in ownership, possession or use* [...]"

<sup>5</sup> See the principle expressed in AC Decision 13/2019 in the case of B. A., where the AC stated that:

"62. The assessee attached to his explanations on the results of the administrative investigation an affidavit [...] The affidavit of Mrs. D.K.Ç. is not legalized by apostil, therefore - taking into account the fact that as a judge the assessee is aware of the formal criteria that an act/document drawn up in a foreign country must meet to be used as evidence in a court of Albania, as well as referring to case-law of the Chamber - the Trial Panel does not give it any probatory value in this judgment."

And also the principle expressed in AC Decision 25/2019 in the case of A. S., where the AC stated that:

"25.2 [...]"

As for the income from his mother pension in Italy, the documents administered in the case file indicate that a number of documents in Italian were submitted to support such income; they were not translated, not notarized and do not contain an apostille stamp. In this context, since the assessee failed to submit documents, which comply with the requirements of Article 266 of the Code of Civil Procedure, proving the financial ability of his mother to provide the donations in question with income from lawful sources, the Trial Panel concluded that such source should not be considered as lawful one justifying the donations over the years."

said bank statements (from which it could be ascertained that the scholarship was paid in the assessee's daughter account with no other evidence for any deposit of transfer from anyone else) cannot be considered by the IQC.

Considering the above, this International Observer believes that the IQC should have been more careful in assessing the evidence at its disposal and that a different result in the assets assessment should have been reached for the assessee.

The confirmation of the assessee in office is the result of an incoherent and incomplete investigation carried out by the IQC in the assets assessment and by an evaluation of evidence that goes against the principles expressed by the Vetting Law in its Art. 49(4), which prescribes that

“4. The Commission or the Appeal Chamber shall base decisions only on documents from known sources, or evidence which is reliable, or is strongly consistent with other evidence [...]”

The evidence used by the IQC for its conclusions and decision is far from being reliable or strongly consistent with the other evidence gathered during this re-evaluation process.

Respectfully submitted,

Theo Jacobs  
International Observer

