

## International Monitoring Operation

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



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12<sup>30</sup>

Prot. No. 437/1

Tirana, 08 July 2021

To the

**Public Commissioners**

Blv. "Dëshmorët e Kombit", Nr. 6

Tirana

Albania

Case Number            **DC-TIR-1-35**

Assessee                **Gerd HOXHA**

### **RECOMMENDATION TO FILE AN APPEAL**

according to

the Constitution of the Republic of Albania, Annex 'Transitional Qualification Assessment', Article B, paragraph 3, letter c 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" (Vetting Law)

## **1. Introduction**

The assessee Gerd Hoxha holds the office of Judge at Tirana Court of First Instance. He is assessed *ex officio* pursuant to Article 179/b, paragraph 3 of the Constitution of the Republic of Albania.

The re-evaluation process was carried out based on three criteria: assets, background, and proficiency. Upon administering the reports of the auxiliary bodies, thorough investigation of the case, administering evidence obtained through the investigation process and submitted by the assessee, the Independent Qualification Commission (hereafter: IQC) Adjudication Panel closed the investigation on 27 April 2021 and notified the assessee the findings with requests for explanations.

The assessee was notified of the hearing, which took place on 01 June 2021. Following the deliberation as per Article 55, paragraph 5 Vetting Law, the Adjudication Panel decided to confirm the assessee in duty pursuant to Article 59, paragraph 4, Vetting Law, and the decision was announced publicly on 03 June 2021.

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

The International Observers (IOs) recommend to the Public Commissioners (PCs) to file an appeal against the decision no. 393 dated 03 June 2021 of the Independent Qualification Commission (IQC) with a majority decision in the case of the assessee Gerd Hoxha, DC-TIR-1-35 case number, by which he was confirmed in duty.

## **2. Grounds for the recommendation of appeal of the asset pillar**

In this recommendation IOs refer to the assessee Gerd Hoxha (G.H.) and his former wife \*\* \*\* (also an assessee) as related persons to each other, as per Article 3.13 of the Vetting Law, because in the moment of the vetting declaration submission, both assesses were married with each other (2012-2019) and they co-owned all their declared assets. Even though they were divorced in 2019, this should not affect the vetting process and the assessment conducted by the vetting authorities.

### **I. Apartment in Tirana 125 m2 co-owned with the related person \*\* \*\***

Apartment in Tirana 125 m2 co-owned with the related person (former wife) \*\* \*\* purchased for 6 500 000 ALL. An agreement for the promise to sale (off-plan) was signed on 02 February 2011 between the assessee and \*\* \*\*, as buyers and Mrs. \*\* \*\* and Mr. \*\* \*\* former sister-in-law of the assessee and her husband, as sellers.

This asset was reevaluated on \*\* December 2011, just few months after the off-plan agreement, to the amount of 23 750 000 ALL. This re-evaluation had repercussions in relation to the taxes paid by the seller. The sale agreement was signed on \*\* October 2012.

According to the vetting declaration of the assessee, one source of the purchase of this asset was a donation by his former sister-in-law (the half owned by the related person to the assessee, \*\* \*\*). The assessee G. H. paid for his half of 6 500 000 ALL, with the following financial sources:

- a. 1 500 000 ALL from his savings.

- b. 5 000 000 ALL from a soft loan received by assessee on 09 June 2011 with the related person \*\*\* as a guarantor. The off-plan agreement of \*\* February 2011 was signed with the aim of taking the soft loan and this asset/apartment was placed as guarantee.

Below there is an analysis of the savings by assessee G.H. and his financial capacity to create the amount of 2 500 000 ALL declared as savings in the periodic declaration of 2003.

#### **The savings mentioned above in point a) of the assessee G. H.**

In 2003 G. H. declares savings to the amount of 2 500 000 ALL, as a source for this savings he declares his income from the Magistrates School and his work in the private sector as of 1995 and onwards as a waiter.

The assessee was shifted the burden of proof, in relation to the legitimacy of his income from his declared work from 1995 until 2000, to the amount of 1 273 804 ALL. During this time, the assessee was a full-time student of the Tirana Law Faculty. The assessee provided the IQC with notarial declarations from his former employers, who declared that the assessee had been employed by them as an unregistered employee in the service sector, mainly as a waiter. The assessee as well submitted documents from the Social Insurance Institute on two of his former employers. In these documents it is stated that the state authorities do not possess pay slips regarding the declared employers of the assessee from 1995 – 2000. Based on this, in his answers to the results of the investigation the assessee has claimed that, given the fact that the state authorities do not have information on his employment and taxes paid by him, he is in the position of objective impossibility as per Article 32.2 of the Vetting Law to provide documents on taxes being paid and as a result he is the position of objective impossibility to prove the legitimacy of the disputed income.

Based on the evidence collected during the administrative investigation, the IOs are of the opinion that the assessee is not in the legal position provided by the Article 32.2 of the Vetting Law. According to the notarial declarations of his former “employers” he was never registered with the state authorities as an employee. Therefore, taxes were never paid on the disputed income. Documents on taxes paid by him never existed and for this reason the Social Insurance Institute accurately states that they do not have information. As a result, the assessee cannot be in the position stated in the Article 32.2 of the Vetting Law, which foresees the objective impossibility.

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

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

#### **II. The loan from : \*\*\* . Bank Albania**

On \*\* April 2009,\*\* \*\* , related person to the assessee, took a loan of 25 000 euro from \*\*\* Bank with the aim to reconstruct and furnish the apartment of 125 m2 in Tirana, that they had planned to buy

from the sister-in-law of the assessee, \*\*\*<sup>1</sup>. The assessee G. H. was the guarantor of this loan agreement. This legal action qualifies \*\*\* as another related person to the assessee G. H., as of 2009 until their marriage in 2012.

On\*\* February 2011<sup>2</sup>, according to the bank statement, the sister-in-law of the assessee/other related person \*\*\* pays back the bank loan. The assessee in his vetting declaration stated that the amount of 25 000 euro was given to his wife<sup>3</sup> by her parents in order to pay back the bank loan.

According to the assessee the loan of 25 000 euro was received by his related person, \*\*\* from her parents (not paid back yet). The source of this loan is the retirement pensions of the parents of \*\*\* and a monthly allowance of 40 000 ALL, that the sister-in-law of the assessee, \*\*\* had given to her parents from 1995 and onwards. In the notarial declaration of the sister-in-law of the assessee \*\*\* and her husband, they have declared that they have given this monthly allowance to her parents *“in order to meet their average living needs and cover any other expenses that they may have had since 1995”*.

The monthly allowances were given to her parents by \*\*\* (sister-in-law of the assessee) with the aim of giving them the possibility to have an average style of life and by itself it is only logical that they would have spent this money during the years to have the lifestyle their daughter \*\*\* had aimed for them and not to have saved it. On the other hand, \*\*\* was supporting financially \*\*\* separately<sup>4</sup> so her parents should have felt secure about her financial situation so there was no need to save money for \*\*\*

IQC in their decision have analyzed the financial capacity of the sister-in-law to give the monthly allowances to her parents. It is the IOs view that the parents-in-law should be analyzed on their capacity to save and lend as well.

Therefore, the IOs are of the opinion that based on the notarial declaration of \*\*\* and her husband, the living expenses of the parents in law of the assessee should not be calculated in minimum as which was done by the IQC.

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

The IOs recommend that the income of the parents in law of the assessee should be fully investigated in the framework of the reevaluation process of the assessee G.H. for the reason that the assessee co-owned and used the apartment in Tirana, which is reconstructed and furnished with the loan received from the other related person, \*\*\*

### **III. Apartment in Vlora 128 m2 purchased for 55 452 euro on\*\*\*September 2016.**

According to the vetting declaration of the assessee, this apartment was purchased with his savings and those of his wife, without specifying the years in which these declared savings were created.

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<sup>1</sup> The off-plan agreement between the assessee G. H., his related person \*\*\* and his sister-in-law for this asset was signed in 2011 and the sale agreement in 2012.

<sup>2</sup> The same day as the off-plan agreement.

<sup>3</sup> Related person \*\*\* , co-owned real-estate before marriage in 2012.

<sup>4</sup> Please refer to the 5 000 000 ALL sum declared by \*\*\* in her initial declaration as donations and financial assistance from the sister \*\*\* to the \*\*\*

Based on the reasoning above, the savings of the assessee from his work as a waiter during 1995 – 2000, appear not to be justified, because they do not meet the legal criteria set on the Article D of the Annex of the Constitution, since there is no proof of taxes being paid. Given the fact, that the assessee has not specified, which of his savings were used to purchase this asset, the savings from his work as a waiter should be excluded from the financial analysis.

#### IV. The vehicle Audi in the ownership of \*\*\*\* and use of G. H.

This vehicle was purchased by \*\*\*\* (father of the assessee G. H.) on \*\* April 2011 for 37 000 USD, furthermore customs and taxes were paid in the amount of 931 091 ALL. On \*\* June 2011 the vehicle was imported to Albania.

On \*\* July 2011 \*\*\*\* as the lender and G. H. as the borrower signed a notarial use agreement. In this use agreement is stated that *"the lender authorizes the use of the vehicle, which is in a good physical condition to the borrower. This use agreement is signed for an indeterminate time and the vehicle to be used within and outside the Republic of Albania. From this day and onward, the borrower is responsible legally for the vehicle and its physical condition."*

The use of this vehicle was declared by the assessee in his vetting declaration. This vehicle was later sold on \*\* July 2018 by \*\*\*\*

Based on the use agreement, signed between \*\*\*\* and G. H., the lender \*\*\*\* was qualified as another related person and the assessee was shifted the burden of proof, to prove the financial capacity of \*\*\*\* to purchase this asset. Based on the evidence submitted by the assessee, IQC conducted a financial analysis on the other related person\*\*\*\* In this financial analysis is included the income of his father \*\*\*\* his mother \*\*\*\*, his sister \*\*\*\*and the assessee.

The IOs are of the opinion, that income of the assessee should not be included in the financial analysis because of the following reasons:

- the assessee was subject of periodic declaration since 2003 onwards and he declared his cash savings in the following periodic declarations (which were declared to have been used to purchase the immovable assets he co-owns with his related person \*\*\*\*);
- he never declared to have had additional cash savings, which were used to purchase the vehicle.
- the assessee could not have contributed to purchase the vehicle, because the parents of the assessee, \*\*\*\* and \*\*\*\* declared<sup>5</sup> that all expenses of their children were covered by them. As declared, G. H. and his siblings could be in a position to save as much money possible to enable them to create savings for their future families.

The IOs are also of the opinion that the income of the sister of the assessee, \*\*\*\* should not be included in the financial analysis, as the parents of the assessee declared in the notarial declaration that they financially supported their children.

Just one week after the circulation permit of the vehicle was issued (on \*\* July 2011), \*\*\*\* signed a use agreement with the assessee G. H. to transfer the use of the car within and outside Albania to the assessee for an indefinite time. According to the notarial use agreement, from the day of the agreement the assessee

<sup>5</sup> In their notarial declaration of \*\* September 2020.

– as the borrower – shall bear all legal responsibilities of the car and shall be responsible for the physical maintenance of it.

Based on the above the IOs are of the opinion that the assessee was the de facto owner of car. From this presumption we conclude that this vehicle was a hidden asset of the assessee G. H. and used by his entire family.

#### V. The vehicle Citroen C4 purchased in year 2012.

The vehicle Citroen C4<sup>6</sup> was purchased by the assessee and the related person \*\* on \*\* August 2012, based on the contract with ' \*\*\* \*\* , for the price of 16 500 euro. The first lease equivalent to 54.5 % of the final value has been paid in the moment of signing the contract, while the following lease payments were paid afterwards on monthly basis.

According to the financial analysis of the IQC, the assessee – as identified in the IQC Results of Investigation – lacks financial capacity to purchase the car. The assessee explained that “[...] the non-disclosure of the cash balance increase by the amount of ALL 1,200,000 for the year 2011[...]” is the reason of the lack of financial capacity in the year 2012.

The IOs are of the opinion that, this explanation is not to be sufficient, and by that the assessee lacks the financial capacity to buy this vehicle in the year 2012.

#### 3. Grounds for the recommendation of appeal of the proficiency pillar

The IOs are of the opinion that the reevaluation should include the proficiency pillar, especially the findings and the opinion of the IO assigned to the case, which are reflected in the IQC decision.

#### 4. General conclusion

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

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



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<sup>6</sup> with the car plate AA: \*\*\*