

Introduction

The assessee Atalanta Zeqiraj, judge of Vlora District Court, is one of the candidates to the Special Court for Corruption and Organised Crime, and therefore falls under the category of priority cases. She is assessed ex officio pursuant to Article 179/b, paragraph 3 of the Constitution of the Republic of Albania.

The Re-evaluation process was concluded based on three criteria: asset, 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, finally closed the investigation on 14th June 2021, notified the assessee the findings, and the assessee remained with the burden to provide evidence or arguments against the preliminary conclusions based on the assets assessments. Following her submissions to rebut the established presumption, the panel decided to summon the assessee to the hearing.

The hearing took place on the 28th of June 2021 and 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 Vetting Law, and the decision was announced publicly on the 30th of June 2021.

Summary of recommendation

The International Observers recommend to the Public Commissioners to file an appeal against the decision of the Independent Qualification Commission of the 30th of June 2021 in the case of the assessee Atalanta ZEQIRAJ, case number DC/VLO/1/05, by which this assessee has been confirmed in duty.

The International observers with this recommendation seek for Appeal Chamber to assess if the standards and reasoning applied by the IQC to define proportionality in this case, are consistent with the standard of proportionality and reasoning used by the Appeal Chamber in the re-evaluation of comparable cases.

Basis of Recommendation

1. Under paragraph 3 of Article D of the Annex to the Constitution of the Republic of Albania” *The assessee has to credibly explain the lawful origin of assets, property and income. Income shall only be considered legitimate if it has been declared and taxes have been paid.*”
Whereas, under paragraph 5 of the same article”... *If the assessee takes steps to inaccurately disclose or hide assets in his or her ownership, possession or use, a presumption for the disciplinary measure of dismissal shall be established which the assessee shall have the burden to dispel.*”

Furthermore, under article 52 paragraph 2 Vetting Law, “ *If the Commission or the Appeal Chamber concludes that the evidence has reached the standard of proof under Article 45 of this Law for its report, the assessee shall have the burden to provide evidence or arguments about evidence against that conclusion.*”

Finally, pursuant to article 66 para 2, *The Appeal Chamber, in the reasoning of its decision, may give indication to the commission helping it to decide in similar cases.*

2. Through the Adjudication Panel’s decisions closing the investigation, which revealed: inaccuracy of disclosure, the failure of the assessee to provide sufficient evidence supporting the legitimacy of the sources of financing of her related persons for those assets the assessee received as gifts or otherwise has in use, and to clarify the conflict of interest deriving from the related person benefiting from public funds from the State budget; the burden of proof, as per article 52 paragraph 2 Vetting Law, was shifted to the assessee in the asset pillar, as described in the notification sent to her.
3. By the evidence and arguments provided after being notified about the result of the investigations, and the consequent inversion of the burden of proof, the assessee submitted with the reply: her interpretation on some legal standards, her interpretation of the facts, and claimed lack of knowledge about the existence of the conflict of interest, while however stating she never issued any decision involving Public Institutions as party in the proceedings. The panel invited the assessee to the hearing when the same arguments previously presented were exposed and further explained.
4. The adjudication panel after evaluating all circumstances and evaluating the assessee’s explanation in rebuttal to the preliminary conclusions on asset, concluded the assessee has not provided sufficient explanations to rebut all preliminary conclusions on asset. The same panel however concluded that, notwithstanding the issues contested and not explained, the identified shortcomings do not impede the confirmation of the assessee in duty, as in this case, the dismissal of the assessee, would not be proportioned and in line with the aim of the process of re-evaluation, because of reasons further elaborated in the decision.
5. Given the foregoing, the international observers make the following remark:
 - a. The legal standard used to qualify the assessee father as other related person is in line with the law and the existing jurisprudence, and pursuant to Article 32 para 4, assessee was rightly asked to prove the legitimacy of the sources of her other related person to finance the assets assessee received as gift or in use and explain her declarative shortcomings.

- b. The assessee's explanation about the sources used by her related person to acquire in 2015 the apartment in Vlora, in" Rruga *** **", in which she resides without compensation and of which she has exclusive use, confirms the theoretical financial capacity of her other related person to acquire the asset, but not the legitimacy of the sources used.
 - c. The assessee's explanation about the sources used by her related person to acquire in 2014 the apartment in Tirana, in" Rruga *** **", in which she resided without compensation in 2014-2015 while discharging her duties in Tirana District Court, and whose use she failed to declare, confirms the theoretical financial capacity of her other related person to acquire the asset, but not the legitimacy of the sources used.
 - d. The assessee's explanation about the sources of financing of her other related person to provide in 2014: the -not declared- gifts of 200.000 ALL, and the -not explicitly declared- gift of 5000 Euro used to purchase of the Mercedes Benz B Class-, confirms the theoretical financial capacity for the donation, but not the legitimacy of the sources used.
 - e. The assessee did not provide any explanation about the alleged conflict of interest, declaring her lack of knowledge and failing to submit any evidence, while she limited her explanation to confirm that in the discharge of her duties, she always respected the reasons foreseen in the law for abstention. Her reply, while mixing two different legal institutes, fails also to clarify how could the assessee safeguard the application of procedural rules for abstention, while claiming ignorance about the existence of her father contractual relationship with public institutions and the identity of the public representatives of such institution.
 - f. Finally, as transversal issue, the assessee's failure to provide to the Commission copy of her father's contracts with Public Institutions -which could assist in defining origin and scope of the alleged conflict of interest-, practically made impossible to distinguish in the re-evaluation of assets incomes acquired by her other related person in conflict of interest and used as sources of financing for the asset hereby described, from any other income acquired by the same in the discharge of his entrepreneurial activity.
 - g. It is worth mentioning nonetheless, assessee submitted the conflict of interest as alleged, was finally solved in May 2021, when the father ownership over the company, was transferred to the assessee's brother.
6. Finally, the undersigned observers note that, while entirely in the domain of the IQC to assess each case as individual without prejudice to the assessee, it remains unclear if the standard of proportionality applied by the IQC in this decision confirming Atalanta Zeqiraj, is consistent with the standards of proportionality used by the AC in previous decisions, and because of the

foregoing we remit this case to the AC for its determination about the specific nature of this case and its decision in light of the existing standards, and the concrete findings of this case.

7. Because of the foregoing, the IMO recommends an appeal against the IQC Decision of the 30th of June 2021.



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