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

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

Case Number **DC-TIR-1-41**

Assessee **Kastriot GRAMSHI**

RECOMMENDATION TO FILE AN APPEAL

according to

Article B, paragraph 3, letter c of the Constitution of the Republic of Albania (hereinafter "Constitution"), Annex "Transitional Qualification Assessment", and Article 65, paragraph 2 of Law No. 84/2016 "On the transitional re-evaluation of judges and prosecutors in the Republic of Albania" (hereinafter "Vetting Law" or VL).

1. Introduction and Scope of the Recommendation

Kastriot GRAMSHI has been assessed by the Independent Qualification Commission (hereinafter "IQC") pursuant to Article 179/b, par. 3 of the Constitution and in accordance with the provisions of the Vetting Law. With its decision, the IQC decided to confirm the assessee in office.

The International Observers (hereinafter: IOs) recommend the Public Commissioners (hereinafter: PCs) to file an appeal against the entirety of the results reached by the IQC on the asset assessment. The IOs believe that a correct assessment of all the issues of the case should result in a dismissal from office, as the assessee does not reach a trustable level of asset assessment pursuant to Art. 59, par. 1, letter a of the Vetting Law and because of the breach of the public trust in furtherance of an overall assessment of the case.

2. Grounds of the Recommendation

The IOs believe that the Public Commissioners should appeal the results of the assets assessment in its entirety, to permit the Special Appeal Chamber to undertake the full financial analysis of all the years which will also allow to properly verify the IOs' concerns on the following issues.

In a nutshell, the assessee did not correctly declare the amount of a loan taken in 2012 and of its 2nd installment (not until October 2021) and did not have legal income for its payment; moreover, IMO considers that the assessee did not have legal income for the savings accumulated in the USA bank account.

The years before 2005 – and particularly the years 2003 and 2004 – should be considered for a correct evaluation of the assets assessment and of the ensuing financial analysis, according to a correct interpretation of legal and factual elements related to this case. In this event, the negative balance for the years 2012 and 2014 can already total to an amount of around 40.000$.

a) *The lack of correct declaration of the loan disbursed in 2012 and of its second installment*

About the declarations of the loan (as per paras. 47.2, 47.3 and 49 of the IQC Decision) it is important to report that

i) In the first declaration – before taking office in 2014 - the assessee declared the following:

- In the asset section: "*... house in New York... with a value of 290.000$. Source: down-payment of 29.000$ and a loan from *** Bank to the value of 261.000$*";

- In the liability section:

Description of the liability	Amount of financial liability remaining unpaid until the date of taking office
Loan for purchasing a house ... in the value of 261.000$ and a term of 20 years...	*217.500$*

ii) In the vetting declaration, the assessee lists the loan as a source without specifying the amount, as follows:

Description of the liability	Amount of financial liability remaining unpaid until the date of declaration
*Loan from *** Bank ... repayment starts on 2012 and ends in 2032...*	*184.646$*

iii) In the replies to the first questionnaire, following question No. 4, it is stated that: "*In 2012, financed in the amount of $ 261,000 USD by *** Bank for the purchase of a two-family house, at the address: *** *** Bronx NY, ***, with co-owners Kastriot Gramshi and *** *** .*

iv) In the replies to the first questionnaire, following question No. 9, it is stated as follows: "*Purchase of a residential house consisting of two apartments/two families, co-owned by brother *** *** , located at the address... Purchase price $ 290,000 USD... First installment / down payment $ 29,000 USD. While the difference of $ 261,000 USD, was credited by *** Bank*";

v) In the replies to the second questionnaire, following question No. 5/c, it is stated: "*The price difference (after paying the first down payment) is credited by *** Bank*";

vi) In the replies to the third questionnaire, following question No. 4 (the replies to the third questionnaire were submitted at the end of October 2021): "*The payment of the first installment required by the bank is 10% of the sale value of the property, in the amount of $ 29,000. This amount was paid by both brothers, but the transaction was performed by me on behalf of the law firm ... The amount credited by *** Bank was $ 217,500 ... To finalize the sales contract, it was requested that the price difference with the amount credited by *** Bank had to be covered by the buyers...*".

In light of the above, it is possible to state that the inconsistent declarations made by the assessee in regard to the loan (and specifically in regard to its amount) configures a lack of correct declaration or – to say the least - a situation of inaccuracy in the declaration at least until October 2021 (until – and as confirmed by - the replies given in the 3rd questionnaire), which might also ultimately breach the public trust.[1]

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[1] See, for the impact on the public trust of similar situation of inaccuracies, *mutatis mutandis*, AC 2/2020 (*** ***) in which it is stated that:

> "*24.5. The AC reached the conclusion that there are inaccuracies in the assessee's declaration regarding the source of creation of the asset, Mercedes Benz vehicle. In these circumstances, since this is only one incorrect disclosure in the periodic declaration, this inaccuracy alone cannot raise to the level of a dismissal. However, from an overall evaluation within the meaning of Article D, paragraph 5 of the Annex to the Constitution, this legal and factual situation renders applicable Article 61, paragraph 5 of Law no. 84/2016, in the framework of compromising public trust.*" and that
>
> "*25.3. As to the parking area, the AC concludes that there are inaccuracies in the assessee's declaration regarding its source of creation. In these circumstances, since this is an inaccuracy found in the periodic declaration, while the source was declared in the Vetting Declaration, it is established that this inaccuracy alone cannot raise to the level of a dismissal. However, from an overall evaluation within the meaning of Article D, paragraph 5 of the Annex to the*

With regards to the declaration of the 2nd installment of 46.000 $ (referred to in paragraphs 47.3 and 49 of the IQC decision), it must be noted that the first time the second installment is declared is at the end of October 2021. The assessee disclosed it while replying to the third questionnaire where, following Question No. 4, he said:

> *"Regarding the loan borrowed by you and your brother from *** the document "Standard commitment letter" [from the] Bank, addressed to Kastriot and *** *** shows that *** Bank notified you of the approval of the loan in the amount of USD 217.500. Please explain what this document represents and clarify/prove by documents the approved and disbursed loan amount, when the loan was disbursed, and when the amount was transferred to the account of the selling party – substantiating such facts with documents. Please provide the complete loan agreement, as well as any other document that sheds light on the identified ambiguities."*
>
> Answer: *"Enclosed you will find the "Standard Letter of Commitment" by *** Bank, 5 sheets total. Regarding the provision of the full contract (Standard Letter of Commitment), to avoid reiteration, please note that the same explanations, as for the contract of sale above, apply. Whereas, as explained in questionnaire 2, namely in [reply to] question no. 5, the purchase price of the property located at: *** , Bronx NY, *** , co-owned by Kastriot Gramshi and *** *** is USD 290,000, (two hundred and ninety thousand).*
>
> *The first down payment on contract, as required by the Bank, is 10% on the sale property price, in the amount of USD 29,000, (twenty-nine thousand). This amount was paid by both brothers, but the transaction was carried out by me on behalf of law firm *** And Associates *** As Attorneys (see Cashier's Check NON-NEGOTIABLE, dated **.16.2012).*
>
> *The amount credited (Mortgage) by *** Bank is USD 217,500 (two hundred and seventeen thousand five hundred) - of which USD 500 is a bonus, which means that the interest rate applies on the amount of USD 217,000. According to the procedure of *** Bank, the property was appraised, and the Bank decided that the amount to be disbursed should be 217,500 EUR.*
>
> *To finalize the sales contract, it was requested that the price difference ($ 290,000 USD - $ 29,000 USD-217,500 USD) as per the amount disbursed by *** Bank), ought to be covered by the buyer. Since we (the buyers) agreed to proceed with the property purchasing procedure - the amount paid originated from the savings of both of us, but the transaction was carried out by brother *** *** – the amount paid to *** *** (Creditting Bank of the property seller) was 46,638.43 USD (see Cashier's Check NON-NEGOTIABLE, Dated **.21.2012)."*

Constitution, this legal and factual situation renders applicable Article 61, paragraph 5 of Law no. 84/2016, in the framework of compromising public trust. ".

Whereas, for situations where incomplete or contradictory declarations given by the assessee have an impact on the asset assessment see, *mutatis mutandis*, AC Decision 11/2020 (*** *** – paras. 21 through 23) and AC Decision 25/2020 (*** *** , paras. 36 through 40).

It must be pointed out that, in this regard, the assessee has not disclosed the 2nd installment in none of the declarations. He only disclosed it in the replies to the 3rd questionnaire.

In light of the above, the IQC conclusion in par. 47.3 of its decision which confirmed the assessee in office, where IQC stated that

> *"47.3. Based on these facts and circumstances, the Commission considered credible the claims of the assessee considering that:*
> *(i) the assessee's disclosure of the loan taken from *** Bank' in the amount of USD 261,000 in the 2014 APD and in the standard questionnaire as one of the sources of creation of the asset subject to verification, was made referring to the sale contract dated **.02.2012, while under the financial liabilities section of this declaration, the assessee has accurately declared the loan in the amount of USD 217,500.*

cannot be shared by IMO.

The sale contract was signed in February 2012, the loan was disbursed in May 2012, whereas the first declaration was made in August 2014 – more than 2 years after receiving the loan. The assessee should have declared the exact amount of the loan issued by the bank, explaining why the amount in the sale contract differed from the amount of the loan. Instead the assessee did not disclose such information, as stated, until October 2021.

Therefore, IQC conclusion in its decision where it was affirmed that "*the assessee has accurately declared the loan in the amount of $ 217,500*" in the liability section, does not appear to be correct. The assessee declared that the loan receved was 261.000$, and the remaining liability in 2014 was 217.500$.

IMO affirmes that, therefore, the assessee failed to disclose the correct amount of the loan and the second installment in the vetting declaration, first questionnaire and second questionnaire.[2] The correct amount of the loan and of the second installment were declared only in the replies to the 3rd questionnaire, following question No. 4 (the replies to the 3rd questionnaire were submitted at the end of October 2021).[3]

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[2] In the vetting declaration the assessee lists the loan as a source without specifying the amount: "*Loan from *** Bank ... repayment starts on 2012 and ends in 2032...*". Amount of financial liability remaining unpaid until the date of declaration – *184.646$*.
In the replies to the 1st questionnaire, following question No. 4: "*In 2012, financed in the amount of $ 261,000 USD by *** *** Bank for the purchase of a two-family house, at the address: *** , Bronx NY, ** , with co-owners Kastriot Gramshi and *** *** ****".
In the replies to the 1st questionnaire, following question No. 9: "*Purchase of a residential house consisting of two apartments/two families, co-owned by brother *** *** located at the address... Purchase price $ 290,000 USD... First installment / down payment $ 29,000 USD. While the difference of $ 261,000 USD, was credited by *** Bank.*"
In the replies to the 2nd questionnaire, following question 5/c: "*The price difference (after paying the first down payment) is credited by *** Bank*"

[3] as follows:
"*The payment of the first installment required by the bank is 10% of the sale value of the property, in the amount of $ 29,000. This amount was paid by both brothers, but the transaction was performed by me on behalf of the law firm ... The amount credited by *** Bank was $ 217,500 ... To finalize the sales contract, it was requested that the price difference ($ 290,000 USD - $ 29,000 USD-217,500 USD) as per the amount disbursed by *** Bank), ought to be covered by the*

IQC conclusion, according to which:

> *"47.3 (ii) the failure to disclose in PAD of 2014 but also in the standard questionnaire, of the amount of $ 46,638 paid by the assessee's brother on **.05.2012, was not made to hide this payment, but to be in the same line with the contract of sale dated ** 02.2012 [...]"*

cannot be shared. The first declaration – before taking office - was submitted in August 2014.

In that declaration – and in the following ones - the assessee had the obligation to be consistent both with the sale contract (February 2012) and with the loan cotract (May 2012).

The argument that the assessee did not disclose the amount of loan of 217.500$ and the second installment of 46.638$ because he wanted to be cosistent with the sale contract does not stand. In August 2014 and in the following declarations, he could have disclosed the correct amount of loan issud in May 2012, and explain why that was not the same as the one in the sale contract in February 2012.

The IQC conclusion according to which:

> *"47.3 (ii) ... especially in the conditions when it has been verified that the payment of this amount was made by bank check, a fact that is easily and fully evident."*

cannot be shared either.

It is true that the payment of the second installment was made with a cheque and thus – under normal circumstances - the payment is easily traceable as it is a bank transaction. However, as the IQC is generally unable to get information and data from financial institutions in the USA, the only way IQC could be aware of such transaction would have been through the declarations and submissions of the assessee.

The payment transaction of 46.386$ for the second installment was not declared by the assessee until October 2021.

The part of the IQC decision in which it is stated that:

> *"47.3 (ii) ...Moreover, the assessee and his brother had the legal income to make this payment within **.05.2012, which issue is addressed below in paragraph 49 of this decision."*

cannot be shared either, as we will see in the following point, as IMO advocates that the assets assessment and the relevant financial analysis should also cover the years before 2005, and particulary the years 2003 and 2004. In such event, the assessee and his family do not have the legal sources to pay the second installment, and he financial analysis would likely have a negative balance of around 16.088$.

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buyer. Since we (the buyers) agreed to proceed with the property purchasing procedure - the amount paid originated from the savings of both of us, but the transaction was carried out by brother *** *** *– was 46,638.43 USD".*

b) *The timeline of the financial analysis, the negative balance for the years 2012, 2014 and 2015, the money alleged transferred to the USA and to the income earned in the USA*

The IQC decision in the part where it states that:

> ***47.3** (iii) Therefore, the identified inaccuracies which did not bring any consequence cannot constitute a ground for penalizing the assessee. In this assessment, the Commission also refers to the already consolidated stance of the SAC and the case law of the Commission, which consider that inaccuracies in the periodic declaration of assets do not constitute a separate ground to charge the assessee with disciplinary responsibility, in cases where they have not brought consequences.*
> ***49.1** With regard to the time period on which a financial analysis was carried out on the assessee and his family [residency] in the USA, the Commission deems that it should start from year 2005, as it is considered in the results of the investigation, as well; not from August 2003, in reference to the following facts and conditions:"*

cannot be shared either.

The assessee moved to the USA in August 2003. In the decision, IQC has reasoned that:

- The financial analysis for USA starts in 2005;
- Assessee's incomes for 2003 and 2004 are included in the financial analysis to the value of 28.880$;
- Assessee's brother income for 2003 and 2004 are included in the financial analysis to the value of 12.197$;
- Assessee's fathers' income for 2003 and 2004 are included in the financial analysis to the value of 10.300$.

In the results of investigations,[4] the IQC started the financial analysis from 2005 because the panel understood that the assessee declared to have transferred from Albania to USA the amount of 60.000$.

It was estimated that half of that money was used to cover life expenses in 2003 and 2004 – and this was the reason why the financial analysis started from 2005. However, this assumption is not correct, as the assessee himself declared, later, that the total amount transferred from Albania to USA was - in total - 20.000$.

Taking into considerations that:

- The amount transferred by the Gramshi's from Albania to USA was 20.000$;

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[4] The IQC results of investigations read as follows:
"[...] *the $60,000 transferred from Albania, as the assessee has declared in Questionnaire No. 4, and half of this amount is considered to have been spend until 2005 to cover the expenses of the family moving to and setting in the USA. Half of it, i.e., $30,000, is the balance / income from the year 2005. The source of this income is lawful, as per the analysis of Asset No. 1 in this report.*" The footnote within that text says that "*In the answer to Question No. 2 in Questionnaire No. 4, the assessee has declared that each of them had around $20,000 at different moments of arriving to America. So, the assessee, his parents and the brother, had $60,000 in total*".

- The minimum costs of living for 2003 and 2004 were, around, 50.000$ - which is well above the 20.000 $ considered by IQC to have covered life expenses for the same period;
- The assessee never declared that the assets generated in the USA were from income during the period 2005-2014; rather he declares that the assets generated in the US were from income before taking office in 2014, which means the entire period between 2003-2014 – and the period before 2003 is irrelevant, as the assessee declared that the amount transferred from Albania to USA (in 2005) was only 20.000$;

the assets assessment and the ensuing financial analysis must cover the entire period the assessee and his family lived in the USA and should start in 2003 with the assumption of the availability of only 20.000$.

The IQC decision, in the part where it states that:

> *"**49.1** (i) the assessee generated no assets in 2003 and 2004 nor carried forward liquidities in the Vetting Declaration and, in these conditions, the period August 2003-December 2004 cannot be in the scope of the Commission's investigation [...]"*

cannot be shared as well.

The conclusion that no assets were generated in 2003 and 2004, is incorrect. While the balance of the bank account (which is an asset) in 2004 is unknown, as per the assessee's declarations it was opened in 2004.

Moreover, it is the very same account that reaches the vetting declaration. In a nutshell, this bank account:

- Was opened in August 2004 – as per the assessee's declaration;
- The balance of this account when the assessee took office was 97.614$;
- The balance of this account in the vetting declaration was 82.684$;
- The financial analysis in 2014 – the year in which we have the first bank statement - is with a negative balance of 25.863$.

From the documents contained in the file we conclude the assessee generated one asset in 2004 – the bank account. While there is no indication on the balance of this account when it was opened, the liquidities that are carried forward in the vetting declaration derive exactly from this account and, accordingly, the very nature of the assets assessment should expand the analysis to the years 2003 and 2004.

Similarly, it cannot be shared the IQC conclusions according to which

> *"**49.1** (ii) the assessee's bank account was opened in August 2004 for practical reasons, not to create assets/liquidities [...]"*

The assessee never declared that he meant "not to create assets/liquidities" by opening the bank account. He rather declared that

> *"[...] I want to clarify that I opened the bank account after the formalization of my status as resident in the USA, and that I deposited the liquidity I had available at the time of opening this account".*

While we don't have any objective way of knowing the exact amounts of liquidities deposited when the bank account was opened, we know that this account reaches the first declaration and the vetting declaration. According to the IMO financial analysis – the balance at the time of the initial declaration shows a negative balance of 25.863$.

Incorrectness can also be found in the IQC part of the decision where it is stated that:

> *"**49.1** (iii) the assessee made no claims that the generated income during August 2003-December 2004 served as a source for the creation of any of his assets;"*

There are two assets declared in the vetting declaration for which the assessee states that:

- House in New York – the source are savings accumulated before taking office in 2014;
- Bank account USA – opened in August 2004, sources as income from salaries.

These declarations state that the assets declared in the vetting declaration were generated from salaries income before 2014. The assessee never made a separation between gained and saved income in two different periods, 2003-2004 and 2005-2014 but, rather, he declares one period which is "before taking office in 2014".
The division that IQC makes between 2005-2014 and 2003-2004 is, therefore, artificial and does not serve for a correct assets assessment and for a correct performance of a proper financial analysis.

c) *The alleged impossibility to provide documents*

About the objective impossibility to provide documents for 2003 and 2004, the assessee claimed that he had legal income for 2003 and 2004, but he is in objective impossibility to provide documents due to the long time that lapsed. He stated that the US authorities provide tax documents not older than 10 years.

When the assessee took office in 2014 – as part of the declaration before taking office - he provided income documents for the time he lived in the USA. Most of the documents were tax return (self-declarations) and some of them were tax transcripts (for the years 2010-2013) which were downloaded from the IRS (internal revenue services) website on**May 2014. At that moment, the assessee was not in an objective impossibility to provide documents proving the legal income from 2003 and 2004. Furthermore, the assessee became a legal resident of the USA in July 2004.

In this regard, and with reference to the possibility of legal income for the years 2003-2004 (see par. 48.7 of the IQC decision), in the replies to the fifth questionnaire the assessee has given the following statement:

> *"Regarding the earned income and coverage of expenses for September 2003 – December 2004, let me clarify the following:*
> *I was granted permit to stay in the United States on July **, 2004. Several rights come to existence from that moment such as obtaining a Personal Number, the right to work, the possibility of opening bank accounts, etc.*
>
> *I started work in September 2003 and the initial declaration of income to the IRS was made in March 2005 which included the total income realized during September 2003 – December 2004. I have not been able to make this declaration available to the Commission. Due to the long time*

as well as the relocations from one residential address to another, the declaration for September 2003 – December 2004, as well as several other documents (including some tax returns of my father and brother or bank statements) were not retained as I did not think that they might be needed at another time. As the time passed has exceeded the time limit for the retention of this information by the IRS itself, I was objectively unable to present them to the Commission.

During September 2003 – July 2004 the payments for the work done were made only in cash and the realized income was declared in the tax return in March 2005. The income for 2005 is presented in the tax return in 2006, statements which I have made available to you. Thus, in the justifying documentation made available to the Commission, there is no information on income I earned during September 2003 – December 2004, with values approximate to that of 2005 as in those years I did the same work.

The impossibility to make available to the Commission information on my income for the period September 2003 – December 2004 as well as such information (for several years) for my father and brother, should not be considered by the Commission as a period without income, I can even tell you that it was the source of daily expenses for our whole family."

It must be noted that it is very questionable whether the assessee has had any legal income for the period August 2003 – June 2004, as he did not have a permission to work by the US authorities. In the same way, the father and brother could not have had legal income for the same period because of the same reason.

Furthermore, the fact that the assessee has not submitted tax documents for the entire period 2003-2004, indicates that he did not have legal income, rather than him being in the objective impossibility to provide such documents as he claimed (in 2014, when he first submitted the declaration before taking office, he was not under such circumstance).

If the above considerations are taken into account, the financial analysis will likely show the following negative balances:

2012	-16.088$	The assessee did not have legal income to pay for the 2nd installment to purchase the house (with reference to par. 49.2 of the IQC decision)
2014	-24.593$	e first US bank statement submitted by the assesseee is in October 2014. The financial analysis unitl October 2014 is negative, which means that the assessee did not have legal income to create this asset Furthermore, in 2014 the assessee pays back 8.438$ for his spouse's laon. The negative balance at the end of 2014 shows that the assessee did not have legal income to partially pay back the loan (with reference to paragraphs 70.3 and 72.4 of the IQC decision)
2015	-21.140$	In 2015 the assessee pays back 8.532$ for his spouse's laon. The negative balance at the end of 2015 shows that the assessee did not have legal income to partially pay back the loan (with reference to paragraph 72.4 of the IQC decision)

Considering the above, IQC decision in the part where it affirms that

> *"**49.1** (iv) On the Declaration Prior to Assuming Office 2014 and subsequently, the assessee filed written documents with HIDAACI that confirm the incomes from 2005 onwards, which indicates that, according to his statements, these were the incomes that served as a source for the creation of his assets rather than the incomes of years 2003 and 2004 [...]*
>
> *(v) It is concluded from the documents about assessee's income during 2010-2013 that he requested and printed out the documents Tax Return Transcript in 2014, a year when the assessee was technically able to also print out the incomes [sic] on year 2004 (the IRS's 10-year document retention period). The fact that he has not done this, strengthens the conviction that the assessee wanted to state that the source of creation of his assets in America are the earnings of year 2005 onwards. Meanwhile, asked by the Commission in relation to his revenues on the period August 2003-December 2004, the assessee has rightfully stated in his submissions and in response to Questionnaire 6 that he is now objectively unable to document these incomes."*

cannot be shared.

It is further obvious that if the assessee wanted to state that the source of creation of his assets in America were the earnings of the years 2005 – onwards, he could have done so in any of the annual declarations. Given that the assessee was not eligible for work until July 2004, and that he did not submit any income documents for 2003-2004, that is an indication that he did not have legal income until 2005.[5]

IQC interpretation of the applicable legal framework, according to which:

> *"(vi) In addition to the above, the Commission cannot ignore the fact that the timeframes August 2003-December 2004 and 2005 – 2012 when the asset was purchased, are outside the range of the assessee's period of office and when he resided in America. In reference to some IQC final decisions the position of assessees cannot by exacerbated by the aim to prove the lawfulness of assets with incomes that were neither generated nor associated with the transitional re-evaluation period; hence, assessees cannot be penalized on this ground* [...]"

cannot be shared either. Although the assessee was not in office, the assets assessment and financial analysis cannot be limited under such reasoning. According to the Jurisprudence of the Special Appeal Chamber

> *"3.1.1 Regarding the above appeal ground, the Special Appeal Chamber Trial Panel (hereinafter AC Trial Panel) reasons that the verification and audit of the lawfulness of origin of assets of the assessees and their source of creation is extended in time even before the assessees were judges or prosecutors. (3.1.1)*

[5] Furthermore, the assessee has been clear in his declaration that the source for generating the assets in the USA, were income from salaries before taking office in 2014.

*3.1.2 In the interpretation of legal and by-laws provisions, more specifically Article 50, paragraph 1 of Law no. 84/2016 and annex 2 of Law no. 84/2016, in section "Declaration of assets", as well as Instruction Prot. No. ***, dated **10.2016 of the High Inspectorate of Declaration and Audit of Assets and Conflict of Interests "On the manner of declaration of assets, in ownership, possession and use, sources of their creation, financial obligations, etc., from the assessees and related persons who shall have an obligation to declare the assets, pursuant to Law no. 84/2016" which instructs in paragraph 7 that: "For every asset in ownership, immovable, movable, liquidities, shares value, treasury bonds and parts of the capital in ownership etc, the assessee and person related to him shall declare the source, time of creation for each asset, by attaching the legal documentation to justify the legitimacy of the source of creation for each asset at the time it was acquired", it is reasoned that the appellant's claim is not based on the law and by-laws acts. The AC Trial Panel reaches the conclusion that on the evaluation of assets and their source of creation, the law does not limit neither the time nor the capacity that the assessees had at the time of their creation."* (AC Decision 02/2019 *** ***).

This position is further confirmed by AC Decision 31/2019[6] (*** ***) – in which a connection with the public trust is outlined -, AC Decision 12/2020[7] (*** ***), AC Decision 13/2020[8] (*** ***) and in AC Decision 03/2021 (*** ***). In this latter decision, the Special Appeal Panel even stated that:

*"71. Regarding this claim of the assessee, the trial panel considers that despite the fact that the assessee was appointed a judge with the Tirana Judicial District Court on **.07.2014, all assets*

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[6] "19. Also, according to the case law of the Chamber[2], an interpretation of the applicable provisions pertaining to the asset assessment criterion, in connection with the purpose of the transitional re-evaluation process, as determined in Article 179/b, paragraph 1 of the Constitution and in Article 1 of Law no. 84/2016, the Trial Panel of the Chamber reached the conclusion that the procedure for asset assessment aims to identify those assessees who have become beneficiaries or users of assets illegally or created them which lawfulness is considered questionable, referring to the standard set out in Article D of the Annex to the Constitution, regardless of whether this fact is directly linked to the exercise of the assessee's duties, or for activities that occurred outside the period of exercise of his/her duties. Confirmation of such relationship of the magistrate in connection with the law and the public, whether in the form of his actions in contradiction to the law, or in the form of accepting the actions of persons associated with him, violates its fundamental values, and as a result the confidence the assessee should convey to the public in fulfilment of the mission/role in administering of justice [...]"

[7] 33. Pursuant to the above-mentioned constitutional and legal requirements, the assessee must convincingly explain the lawful source of the assets and income and must not conceal or inaccurately present the assets under his own or the related persons ownership/joint-ownership, possession or use. The audit of the assets of the assessee and the related persons to him shall start with the vetting declaration of assets and shall extend to the declarations of previous years, in order to verify the accuracy and adequacy [sufficiency] of the declaration of assets and private interests. In this sense, the assets of the related person/persons shall become the scope of the audit because the assets under the ownership, possession or use of assessee and the related person are disclosed at the moment of filling out the declaration of assets for vetting purposes, regardless of the time of their creation and the capacity of [office held] by the assessee at the time of their creation. This is a stance which is already confirmed by the Chamber's jurisprudence, according to which, when it comes to the assessment of assets, the law does not impose any restriction neither on the time of the creation of assets, nor on the capacity [office held by] of the assessees at the time of their creation [...]."

[8] "34. Different from what the assessee, Mrs. *** *** claims, that the assets created by the assessee, including related persons, before taking office cannot and should not be subject to verification under Law no. 84/2016, the Chamber finds that the past of assesses is examined through the re-evaluation process.

34.1 The re-evaluation is an analysis of the past of a public official, considering that assets are the object of review and, therefore, re-evaluation bodies check the source in the past, from which assets were created, and the vetting can be defined as an assessment of integrity to determine appropriateness for public office [...]."

declared by the assessee in the vetting asset declaration are subject to assessment, including those created before the appointment as a judge, moreover when the assessee since 2003, upon entry into force of Law no. 9049/2003, has been an assessee that submitted declarations to HIDAACI and the assets during this period are subject to re-evaluation. ***The trial panel finds the Commission's reasoning in the decision is fair and that, through the asset assessment procedure, the aim is to identify the assessees, who have become beneficiaries or users of assets illegally, or with income, the legality of which, referring to the standard defined in Article D, paragraph 3, of the Annex to the Constitution, is questioned, regardless of whether this fact is directly related to the exercise of the office of the assessee, or turns out to have occurred outside the time period of its exercise"*** (Bold added – AC Decision 03/2021)

thus even showing a different approach of another IQC Panel on the very same issue.

Hence, the IQC conclusion according to which:

"49.2 In conclusion to the process, in consideration of some claims and documents described and reasoned above, by reflecting the pertinent changes to the financial analysis which was sent to the assessee together with the results of the administrative investigation, it is demonstrated that the assessee had lawful incomes to pay the value of $ 75,638 up until 21.05.2012 for the home purchase, because on the financial analysis drafted by the Legal Services Unit the negative balance of - $ 131,085 becomes + $ 11,596"

appears to be incorrect, as grounded on wrong legal and factual assumptions and, therefore, it cannot be shared.

3. Conclusions

In IOs' view the IQC decision confirming in Office the assessee Kastriot GRAMSHI has serious logical and factual shortcomings in the reasoning part, being the result of an inadequate and inaccurate re-evaluation process in the assets component and of the wrong application of the applicable legal framework.

IOs believe that a proper consideration of the asset component in its entirety should result in a dismissal of the assessee as he fails to reach a trustable level of asset assessment as per Art. 59, par. 1, letter a as read in conjunction with Art. 61, par. 3 of the Vetting Law. The IOs also believe that the public trust can be affected by an overall evaluation of the highlighted shortcomings.

In view of the above, the IMO recommends an appeal against IQC's decision – in the asset component, in its entirety - in this case.

Respectfully submitted

International Observer International Observer International Observer

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