International Monitoring Operation

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

Funded by the European Union

To the
Special Appeal Chamber
Bulevardi Dëshmorët e Kombit
Tirana
Albania

Tirana, 25 April 2019

Case Number: **HPC/TIR/1/13**

Assessee: **Antoneta Sevdari**

Dissenting Opinion

pursuant to

Constitution of the Republic of Albania, Annex 'Transitional Qualification Assessment', Article F, paragraph 4

and

Law No 84/2016 'On the transitional evaluation of judges and prosecutors in the Republic of Albania, Article 55, paragraph 5

1. The Independent Qualification Commission, with decision n. 42 of 18.7.2018, confirmed assessee Antoneta Sevdari in duty.

The Public Commissioner timely filed an appeal against such decision.

The Appeal Chamber on 28.2.2019 issued decision n. 6, modifying the decision of the Independent Qualification Commission, thus dismissing the assessee from duty.

2. The dismissal decision is based on three grounds, the first two related to asset assessment, the latter related to proficiency assessment. They can be summarized as follows:

I. **Asset constituted by land plot + building, located in Yzberisht (owned by the assessee's husband in the share of one third of value ALL 3.000.000)**. In the vetting declaration the assessee stated that the source of income for the creation of such asset was the spouse's work as emigrant in Greece (1997-2000) and in Saudi Arabia (EUR 12,000 earned in 2003). The Appeal Chamber contends that the assessee failed to fully justify such income, and this would amount to "insufficient declaration" under art. 61 para 3 Law 84/2016.

II. **Income of USD 19.975,23, earned by the assessee's spouse with his work in the Kingdom of Saudi Arabia during 2006.**
The Appeal Chamber contends that the assessee failed to prove that income tax on such amount was paid and it could not, therefore, be considered as legitimate under Article D, paragraph 3 of the Annex to the Constitution (hereinafter: the Annex), Articles 30 and 32, paragraph 1 of Law 84/2016. This would amount to insufficient declaration (under art. 61 para 3 Law 84/2016, in conjunction with Article 33, paragraph 5, letter "b" of Law 84/2016). Furthermore, the Appeal Panel contends that the behavior of the assessee (who deposited the above amount on her personal account) jeopardizes public trust in the judiciary, in terms of "overall assessment" under art. 61 n. 5, as referred to art. 4 paragraph 2 of Law 84/2016.

III. With regard to proficiency assessment, the Appeal Chamber analyzed the **case referred to with no. 5, selected by lot**, and concluded:
   a. that in her capacity of prosecutor of the case she missed the legal deadline to file an appeal against decision no. 2047, dated 21.06.2016 of the District Court of Tirana
   b. that, regardless of the fact that the assessee might have been in the conditions of objective impossibility to personally file the appeal within the legal deadline, for as long as she considered the decision of the court unjust, she should have taken all necessary steps to notify the Prosecution Office of her situation, so that the prosecution did not miss the legal deadline to file an appeal;
   c. that the above behavior impacted the final results of the re-evaluation process of the assessee in view of the assessment of all three criteria, pursuant to Article 61 n. 5, as referred to article 4, paragraph 2 of law 84/2016.

Asset assessment

3. In the framework of the re-evaluation process, and more specifically of the assessment of assets, the assessee is burdened by Law 84/2016 with two distinct obligations, which are logically and chronologically subsequent. Firstly, the obligation to declare, i.e. to identify the assets in ownership, possession or use and the related sources of income[1]; secondly, the obligation to justify, i.e. to submit the relevant documents proving the lawfulness of the alleged sources of income[2].

4. With regard to the issues described above (asset **I – land plot and building in Yzberisht –** and income **II – USD 19975 earned in Saudi Arabia)**, it was indeed correct for the Appeal Chamber to apply such principle and hold that the assessee had the duty to prove the existence and legitimacy of the declared sources of income[3]. In its evaluation the panel concluded that the assessee did not submit sufficient documentary evidence to justify the existence of the income allegedly earned in Greece and the payment of taxes on the income earned in Saudi Arabia whereby she acquired her assets

The conclusion of the Appeal Chamber however, diverges from that of the Independent Qualification Commission, which - on the basis of the same set of documents and circumstances - not unreasonably concluded that the assessee provided sufficient justification for her assets.

I will not focus here on the factual reasoning which led the Appeal Chamber to a different interpretation of the available evidence.

I will rather elaborate on the legal qualification adopted: I respectfully opine that in the case of assessee Antoneta Sevdari it was incorrect to classify the above findings in terms of "*insufficient disclosure*" pursuant to article 61 n. 3 Law 84/2016. As a consequence, I deem that the sanction of dismissal was unreasonably applied.

5. My conclusion is based, firstly, on the literal interpretation of art. 61 Law 84/2016. The finding of the Appeal Chamber was, precisely, that the assessee "*failed to justify*" the sources of income related to her assets (i.e. to prove their legitimacy).
Now, Law 84/2016 contains a provision (art. 61 n. 1[4]) expressly attaching a sanction to the failure to justify assets and clearly setting forth the mandatory conditions (imposing the threshold of "*twice as much the amount justified by legitimate income*").

---

[1] See art. 31 paragraph 1 of Law 84/2016: "*All assessees shall compile the asset declaration as per Annex 2 attached to this law, and send it to the official address of HIDAAC, within 30 days from the date of entry into force of this Law*".

[2] See art. 32 paragraph 1 of Law 84/2016: "*The assessee and his or her related persons along with the declaration of assets shall submit, all the necessary documents justifying the veracity of his or her statements in the declaration regarding legitimacy of their assets and the source of their creation*". This provision finds its constitutional *pendant* in the provision of art. D paragraph 3 of the Annex to the Constitution: "*The assessee has to credibly explain the lawful origin of assets, property and income*."

[3] With the exceptions considered by article 32 paragraph 2 of the Law 84/2016.

[4] "*The dismissal from office of the assessee shall be imposed as a disciplinary measure in the following cases:*
1. If it is determined that the assessee has declared more than twice the amount justified by legitimate income, including persons related to him or her;"

It appears therefore incongruous not to apply such norm and its sanctioning safeguard to the case at stake, rather resorting to an expansive interpretation – to the detriment of the assessee - of the harsher provision on "insufficient disclosure" set forth in art. 61 n. 3 Law 84/2016.

6. *Systemic interpretation* brings to the same conclusion. This is made clear, firstly, by the very structure of the reevaluation process, as laid out in the Constitution Annex and in Law 84/2016. Their joint reading shows that no sanction can be applied under article 61 n. 3 Law 84/2016 unless the vetting bodies find positive proof that the assessee presented a falsity in the disclosure. In particular:

6.1. Art. **D paragraph 1** of the Constitution Annex establishes that the purpose of asset assessment is to discover either of the following situations:

i. assessees who did not truthfully (i.e. fully and accurately) disclose assets.
ii. assessees who "*possess or have the use of assets greater than it can be legitimately explained*".

This means that the constitutional provisions on asset assessment introduce, from the very outset, a clear dichotomy between two fundamental phases: the moment of "declaration" and the moment of "justification" (i.e. proof of legitimacy) of what was declared.

6.2. **Art. D, paragraphs 2 and 3,** are consistent with such dichotomy when describing the obligations imposed upon the assessee during asset assessment (i.e. the precepts). Art. D paragraph 2 regulates the disclosure, i.e. a behavior of a declaratory nature[5], whereas art. D paragraph 3 disciplines the justification (i.e. a behavior of explanatory, evidentiary nature[6]).

6.3. The last two paragraphs of art. D of the Constitution Annex set forth the sanctions for the above mentioned behaviors, consistently following the same logical distinction[7]. Namely:

i. art. **D paragraph 5** of the Constitution Annex sanctions violations of the "declaratory" precepts, foreseeing dismissal for those assessees who "*took steps to inaccurately disclose or hide*" assets. The wording adopted by art. D paragraph 5 of the Constitution Annex ("*taking steps*") indicates clearly that inaccurate disclosure is sanctioned in so far as it results in an untruthful disclosure, misleading the vetting bodies. In other words, the sanction foreseen by art. D para 5 postulates that the vetting bodies during the investigation reach positive proof of a falsity by the assessee, either by omission (hidden asset) or by commission (false statement). This is not the case when the assessee, after declaring the sources of income, is merely unable to document them or their legitimacy, because in such case there is - from the evidentiary viewpoint - a situation of uncertainty, which cannot be classified logically in terms of "true" or "false".
ii. art. **D paragraph 4** of the Constitution Annex is the norm which, precisely, sanctions violations of the precept to justify assets. In this case, the dismissal is foreseen for those assessees who failed to prove the lawful origin and legitimacy of assets, but only under

[5] "*Assessees shall submit a new and fully detailed asset declaration in accordance with the law*".
[6] "*The assessee has to credibly explain the lawful origin of assets, property and income*"
[7] To this regard it is clear that article D paragraph 3, has a prescriptive nature, but such precept can be sanctioned only in the limits set forth by the subsequent paragraphs of the same article.

condition that the total amount of legitimate property is less than half of the total amount of assets owned or possessed by the assessee.

6.4. The above summarized constitutional layout (and the dichotomy between declaration and justification) is consistently mirrored in Law 84/2016 (articles 30-33 and 61). In particular:

i. Articles 31 and 32 of the law set forth the precepts. Art. 31 imposes the obligation to compile the asset declaration, thus declining at the level of ordinary law the provision of article D paragraph 2 of the Constitution. Art. 32 imposes the obligation to justify[8], thus replicating the provision of art. D paragraph 3 of the Constitution Annex.

ii. Art. **33** Law 84/2016 provides an overall description of the proceeding of asset assessment in front of the HIDAACI. This provision clarifies the functions and aims of the administrative investigation, repeating the distinction between justification (art. 33 paragraph 5 letter b) and declaration (art. 33 paragraph 5 letters c and ç). More importantly, letter ç translates the constitutional notion of "*taking steps to inaccurately disclose*" with the concept of "*false statement*", and this is of relevance for the interpretation of art. 61 n. 3 Law 84/2016.

iii. Art. 61 of the Law 84/2016 sets forth the sanctions for the precepts of art. 31 and 32. Once more, the dichotomy between "declaratory" and "justificatory" behaviors is repeated. In particular:

- Assessees who "*lacked full disclosure during the asset assessment … under article 33*" (i.e., in light of the above, who "hid assets" or made "false statements") are sanctioned under art. 61 n. 3 Law 84/2016.
- Assessees who failed to "*justify assets with legitimate income*" are sanctioned under article Art. 61 n. 1 Law 84/2016: importantly, the sanction can be imposed only if unjustified assets are more than half the total amount of assets.

6.5. In conclusion, as stated above, I deem that strong literal and systemic arguments show that a finding of "inaccurate disclosure" under article 61 n. 3 Law 84/2016:

i. can be reached when the investigation brings *positive proof* that the assessee committed (by action or by omission) a falsity, e.g. when there is evidence *that he did not* possess the source of income which he alleged.

ii. cannot be reached, in particular, if the assessee merely failed to justify the existence or legitimacy of the alleged sources of income[9], because in this situation it is uncertain whether the assessee made any false declaration (e.g. when it is not proven *whether* he possessed the alleged sources of income).

6.6. On the other hand, the finding of "*failure to justify assets*":

i. can be sanctioned *per se* under art. 61 n. 1 Law 84/2016, if all conditions of this article are met, and in particular if the "*twice as much test*" is passed.

ii. might in principle also be considered (even if the "*twice as much test*" is not passed), together with other elements and insofar as their joint evaluation leads to conclude that the assessee

[8] "*The assessee shall submit all the necessary documents justifying the veracity of his or her statements in the declaration*"

[9] A finding of false statement or hidden asset, on the contrary, usually overlaps with a situation of unjustified assets.

"*jeopardizes public trust*", as one of the components of the "*overall assessment*" under article **61 n. 5** Law 84/2016[10];

6.7. The improper application (and expansion) of the provision of art. 61 n. 3 ends up frustrating the application of article 61 n. 1 Law 84/2016 which, as said, is tailored in order to sanction the failure to justify assets (which are exactly the issues found by the panel in cases **I** and **II**). In the interpretation of the Appeal Chamber, in fact, all such cases should also, beforehand, be classified and sanctioned under article 61 n. 3 Law 84/2016. This approach transforms article 61 n. 1, technically, into a *subset* of article 61 n. 3 Law 84/2016, thus *de facto* erasing the distinction between disclosure and justification, with the consequence that article 61 n. 3 would end up draining the provision of article 61 n. 1, making the latter irrelevant. This is critical from the systemic viewpoint.

6.8. I add, from yet another angle, that art. D paragraphs 4 and 5 of the Constitution Annex are of a clearly exceptional nature, because they make exception to the overarching constitutional principle of judicial independence. These provisions are of strict interpretation and, as a consequence, Law 84/2016 (which must be interpreted in accordance with the constitutional parameters) cannot be given a meaning which would make the scope of dismissals broader than article D. This would happen if the mere "failure to justify" were sanctioned as "inaccurate disclosure" without the safeguard of the "twice as much" threshold.

7. The adjudicating panel deems that the lack of payment of the tax on income by the related person (or the lack of proof thereof) amounts to inaccurate disclosure, as such to be classified under article 61 n. 3 Law 84/2016, this entailing immediate presumption for dismissal.
I respectfully disagree with such interpretation, which widens the scope of art. 61 n. 3, once more to the detriment of article 61 n. 1 Law 84/2016.
Antoneta Sevdari and the related person duly described their assets, indicating the relevant sources of income[11] and the panel was satisfied that all incomes allegedly earned in Saudi Arabia had been actually received by the related person.
I fail to see what more the assessee should have done in terms of declaration or disclosure, even more

---

[10] This is, in my opinion, the only possibility offered by the system in order to dismiss the assessee who failed to justify assets under the threshold of "twice as much". It is not possible, in particular, to opine that article 61 n. 3 would attribute "discretionary power" to do so, as opposed to article 61 n. 1 (which would impose the sanction for dismissal, without margins of discretionary appreciation). In fact:

a. The vetting bodies can issue the disciplinary measure of dismissal only if there is a statutory provision (of constitutional level) clearly attributing to them such a power.
b. The list of cases in which such measure can be ordered is limited to those set forth by the sanctioning norms of the Constitution Annex (art. D.4 and D.5, further detailed in the provisions of art. 61 Law 84/2016, to be read in light of the Constitution);
c. Nowhere does the law state – not even implicitly, or *a contrario* - that the vetting bodies "*can*" dismiss an assessee *for the mere fact* that s/he failed to justify his/her assets below the "twice as much" threshold: this power cannot be attributed by art. D.3 Constitution Annex, which has no sanctioning nature.

[11] As required by the template attached to the Law 84/2016 and by the HIDAACI instruction 4095 of 10.10.2016: "*The declaration of income from assessee's or/and related persons work in immigration as source of creation of assets, shall be accompanied with the substantiating legal documentation from the relevant employer, the respective city and state, for the period covered by the declaration, as well as the method of transferring the amounts of money to the territory of Albania*."

so if one should assume that indeed no taxes had been paid (because in this case it would have been by definition impossible for the assessee to document tax payment).
Furthermore I note, from the literal viewpoint, that the provision of article D paragraph 3 of the Constitution Annex merely establishes that "*income is legitimate if taxes have been paid*". This exceptional rule is clearly instrumental to the definition of the scope of legitimate income and its plain meaning is that income on which taxes were not paid cannot be considered in order to "justify" assets. This is therefore, on its turn, instrumental to the assessment and calculation set forth in article 61 n. 1 Law 84/2016.
Thus the mere fact that a part of income tax was not paid by the assessee's husband cannot entail that the disclosure was inaccurate (under art. D paragraph 5 Constitution Annex), but merely that a part of the income was not legitimate. This implies, with regard to assets assessment, the classification under article D paragraph 4 of the Constitution Annex (mirrored by art. 61 n. 1 Law 84/2016), which simply means that the relevant source of income cannot be counted in order to justify declared asset.

This conclusion applies, *a fortiori*, to the case of Antoneta Sevdari, in which the assessee, according to the Appeal Chamber, merely failed *to prove* that tax on income had been paid.

8. As already noted, the Adjudicating Panel found that Antoneta Sevdari failed to justify the legitimacy of income sources, but classified this shortcoming as "insufficient disclosure" under article 61 n. 3 Law 84/2016.
The reasoning of the adjudicating panel is based on the following syllogism:
    i. art. 61 para 3 Law 84/2016 states that the assessee who "*lacked full disclosure during the asset assessment under article 33*" shall be dismissed;
    ii. Art. 33 Law 84/2016 (recalled by art. 61 n. 3 Law 84/2016) includes – among other items - a reference to the "*lack of legitimate financial sources to justify assets*" as one of the objects of administrative investigation (paragraph 5 letter b).
    iii. Therefore, lack of legitimate financial sources is one of the cases of "inaccurate disclosure".

In a nutshell, the adjudicating panel concludes that - by virtue of the referral contained in art. 61 n. 3 Law 84/2016 - every item described by art. 33 of the Law 84/2016 "becomes" a case of inaccurate disclosure.
I respectfully deem that this conclusion is not correct, due to a fallacy in the major premise of the syllogism. In fact:

    i. Art. 33 Law 84/2016 describes the whole "*procedure of reevaluation of assets*". As such, it covers all possible scenarios and areas which form the object of the financial investigation. It refers also to issues which clearly cannot be considered as cases of inaccurate disclosure (e.g. see its first four paragraphs, or paragraph 5, letter a).
    ii. The relevant sentence of art. 61 n. 3 Law 84/2016 ("*lacked full disclosure during the asset assessment under art. 33*") is interpreted by the Appeal Chamber as if it were stating that "*all issues described in article 33 amount to inaccurate disclosure*".
    On the contrary, the plain reading of art. 61 n. 3 makes it clear that such norm is not a

definition of *what* is an inaccurate disclosure (i.e. the scope of the very notion of inaccurate disclosure), but rather the definition of *when* inaccurate disclosure has to take place in order for it to be vetting-relevant (i.e. during which procedural phase can inaccurate disclosure – false statements or hidden assets – be sanctioned under article 61 n. 3). This means that art. 61 n. 3 Law 84/2016 does not create the notion of "inaccurate disclosure", but rather postulates it.

Thus the correct paraphrasis of art. 61 n. 3 is the following: "*inaccurate disclosures committed on the occasion of the asset assessment described by article 33 are sanctioned with dismissal*". This also means that any previous inaccurate declaration made on the occasion of periodic declarations to HIDAACI cannot be considered per se under article 61 n. 3 Law 84/2016.

iii. Accepting the interpretation of the Appeal Chamber, on the contrary, would transform article 61 n. 3 Law 84/2016 into a tool capable of performing the genetic mutation of any of the diverse items mentioned in article 33 into cases of inaccurate disclosure. Thus not only – like in the case of Antoneta Sevdari – the failure to justify the sources of disclosed income, but applying the same interpretation also, for instance, cases of conflict of interest, despite having been duly highlighted in the asset declaration (i.e. despite the absence of any falsity in the disclosure), should be classified as "*inaccurate disclosure*" for the mere reason that art. 33 paragraph 5 letter d refers to them.

Proficiency assessment

9. As highlighted above (2.III) the Appeal Chamber concluded that the assessee's failure to timely file an appeal in the case previously referred as n. 5 was relevant for the purpose of the professional re-evaluation, having an impact on the final result of the re-evaluation process pursuant to art. 61 para. 5 of the Vetting law.
10. I note that the proficiency assessment within the process or re-evaluation is particularly sensitive, in light of the need to avoid impinging, directly or indirectly, on the independent exercise of judicial discretion. This explains the specific difference of the norms governing the proficiency assessment compared to those regulating the functioning of the other two pillars, as well as the fact that professional shortcomings may lead to dismissal only when they cannot be remedied through a one-year training course. The modalities and limits of the proficiency assessment have been appraised by the Constitutional Court of the Republic of Albania, as well as by the Venice Commission, in order to define its scope and minimum safeguards, in compliance with the core principles of the Albanian constitution and international law and praxis. Now, the aim of the vetting process consists in the restoration of public trust, while ensuring proper functioning of the rule of law and the true independence of the judiciary. Thus, proficiency assessment aims at identifying persons who are not minimally qualified to perform the function and those who have professional deficiencies, which can be remedied through training.
11. The key indicators for the assessment are provided by law, and they include insufficient level of knowledge, skill, judgment, or aptitude, or when there is a pattern of work which is non-compatible with his/her position. The consequences of these shortcomings are however different, and the test proposed by the Constitutional Court in its decision 2/2017, para. 54, highlights "*the importance of guaranteeing that the legal opinions expressed by the judges and/or prosecutors, 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*[12]*"*.
12. In the case at hand, the shortcoming identified by the Appeal Chamber consists in one single issue (the failure of the assessee to file an appeal against the decision no.2047, dated 21.06.2016 of Tirana District Court). In particular, the assessee after the legal deadline to file the appeal had elapsed, submitted a request with the Court to have the legal terms reinstated because, alleging that the omission was due to force majeure, she had to take care for sick family members.
13. The Chamber's conclusion that the assessee failed to comply with the professional standard is based on the assumption that she was obliged to appeal: such "obligation", though, did not stem from an assessment of the merits of the case, but merely from the existence of Guidance no 1, dated 14.11.2008, of the General Prosecutor of the Republic of Albania, "*On the efficient exercise of the appeal right*". It states that "*as a rule, the prosecutor who represented the Prosecution Office during the hearing, must present appeal when the court has decided against the requests presented in the final discussion, by not enforcing a sentence because of the lack of criminal responsibility for any reason"* (1.1.c.i). The shortcoming of which Antoneta Sevdari is accused, therefore, is of a merely formal nature. It is not characterized

[12] See also the Opinion CDL-AD (2016)036 of the Venice Commission

by objective gravity in terms of seriousness of the criminal offence at stake; furthermore, a summary analysis of the merits of the case shows that the appeal would have had little chances to be granted, due to the absence of one of the pre-conditions of the criminal offence. This impacts on the specific weight to be attributed to the behavior of the assessee.

14. Furthermore, the behavior of the assessee is the only one singled out by the administrative investigation, considering the entire career of the assessee.
I respectfully think, in light of the above, that it is problematic to attach to this issue any significant value from a disciplinary point of view, be it only with regard to the overall assessment.
I add that Guidance n. 1 of 14.11.2008 states that "as a rule" the prosecutor must present appeal, this entailing that the rule is not absolute, but it can suffer exceptions; the lack of substitutive action by the higher instance prosecutor (who was similarly entitled to file the appeal) seems to implicitly confirm that indeed in this case also the supervisory body considered a case as an exception to the rule.
Nor is it possible to attribute excessive importance to the fact that the assessee, in the attempt to be reinstated, incorrectly claimed that the medical situation of a nephew amounted to force majeure, preventing her from filing the appeal.

Conclusions

15. As I have argued above, the findings against Antoneta Sevdari cannot be classified under article 61 n. 3 Law 84/2016.
16. I also deem that neither the conditions of article 61 n. 1, nor the conditions of article 61 n. 5 of Law 84/2016 are met. With particular regard to article 61 n. 1, it is clear from the financial analysis that the lawful income of the assessee and her related person is far from amounting to less than half of the assets' value.
17. With specific regard to art. 61 n. 5, the assessee's shortcomings are of scarce significance, both from the subjective and objective viewpoint. In particular:
    - the declared source of income for the acquisition of **asset I**, back in 2001, was the salary from emigration work of the assessee's husband in Greece and Saudi Arabia earned in the remote years 1997-2000, thus up to 20 years before the vetting declaration.
    - The assessee was able to provide sufficient evidence in order to prove that her husband indeed lived in Greece in the period 1997-2000 for working purposes. She also filed with the Court a number of Greek social security documents.
    - She submitted a statement from the company Geosat Sh.p.k., which confirmed the existence of a contract with Mr Arben Sevdari for services rendered in Saudi Arabia during a five-month period from June to December 2003. The contract was not available any more due to time lapse, but the Appeal Chamber on the basis of such document concurred that the alleged amount had been received.
    - The plot of land was acquired by the assessee's husband in the year 2001 (sixteen years before the vetting declaration), when he and Ms Sevdari were just married. The building was

constructed during the two following years, in joint ownership between the husband's family members, when the assessee had not started her career as a prosecutor yet.

- There is no proof that any fiscal violation was committed by the assessee's husband with regard to the 2006 Saudi Arabia income (**asset II**). It appears excessive to blame the assessee for failing to audit the spouse's tax payment on his foreign work revenues. I add that tax payment in Albania could take place after the receipt of the money transfer in the assessee's bank account, so it appears illogical to criticize the assessee for not checking the fulfilment of an obligation which could only be performed afterwards.
- All alleged financial violations were referable to the assessee only indirectly, through the spouse. This is relevant from the subjective viewpoint in order to gauge the seriousness of the assessee's conduct;
- The overall amount of income which cannot be considered for the justification of asset, due to lack of proof of tax payment, is only a small fraction of the overall legitimate income available to the family household;
- There are no positive indicators showing that the assessee acted in a fraudulent manner in order to deceive the vetting bodies;
- The only shortcoming found in **proficiency assessment**, as already explained above, is of scarce subjective and objective relevance.

In light of the foregoing, I respectfully deem that the circumstances of the case are insufficient to conclude that the assessee jeopardizes public trust in the judiciary. Thus it was disproportionate to sanction the assessee with dismissal.

Respectfully,

Ferdinando Buatier de Mongeot

International Observer
International Monitoring Operation