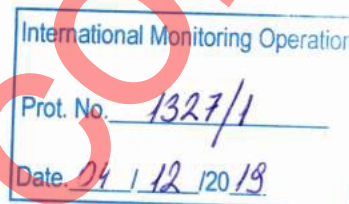




International Monitoring Operation

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



Funded by the European Union

To the

Public Commissioners' Institution

Bulevardi "Deshmoret e Kombit", Nr. 6

Tirana

Albania

Case Number **SCC-P/TIR/1/01**

Assessee **Besim Hajdarmataj**

RECOMMENDATION TO FILE AN APPEAL

according to the Constitution of the Republic of Albania, Annex 'Transitional Qualification

Assessment', Article B, paragraph 3, letter c

Introduction

The Assessee Besim Hajdarmataj holds the office of Prosecutor within the Special Prosecutor's Office. 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 1st of April 2019, and notified the Assessee the findings with some requests for explanations.

Meanwhile, some public denunciations were submitted to the attention of the IQC and IMO, pursuant to which, on the 9th of April 2019, the Panel decided to re-open the investigation to acquire additional evidence. The investigation was successively closed on 24th of September 2019, and the Assessee was notified with the addendum to the findings, in which the burden of proof was shifted to him to provide evidence or arguments against the preliminary conclusions based on the proficiency assessment. Following his submissions to rebut the established presumption, the panel decided to summon the Assessee to the hearing.

The hearing took place on 14 October 2019 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 16 October 2019.

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

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 16 October 2019 in the case of the Assessee Besim Hajdarmataj, case number SCC-P/TIR/1/01, by which he was confirmed in duty.

Grounds for the recommendation

1. Through the Adjudication Panel's decision of the 24th of September 2019, the Assessee was asked to provide explanations pursuant to article 52 of the Vetting Law with regard to the identified shortcomings in his financial resources. Under the proficiency pillar, the amended result of the investigation identified a pattern of shortcomings in a number of very high-profile cases, resulting in the jeopardy of public trust. Therefore the IQC concluded that the standard for a preliminary conclusion for dismissal under article E paragraph 4 of the Constitution had been reached and the Assessee was informed that he had the burden to dispel such conclusion. The International Observers, having reviewed the case file and the results of the public hearing, deem that a review of the case by the Appeal Chamber is necessary, for the reasons explained hereafter.

2. With regard to the assessment of proficiency

During the administrative investigation several complaints were filed against the Assessee with Independent Qualification Commission and the International Monitoring Operation.

They referred, among other things, to five cases of paramount importance investigated respectively by the Serious Crime Prosecutor's Office, by the Kurbin prosecutor's office and by the Durres Prosecutor Office when the Assessee was at the helm. The complaints allege that the cases were willfully mismanaged in exchange for financial kickbacks.

Whilst the allegation of bribery remains to be proved, it is a fact that each of the cases is characterized by significant shortcomings.

The Assessee either directly issued the final decisions, thus acting as the prosecutor of the cases (in the cases below nn. 2.1, 2.4, 2.5), or he failed to exercise the backup duties of oversight and control to which – in such momentous cases – he was bound as head of the prosecutor's office, under the Law on Prosecutor's Office in its subsequent versions.

The High Prosecutorial Council was asked by the IQC for an assessment, and its reply dated *** 05.2019, received by the IQC and registered under Prot. No. *** .

The Assessee provided his replies to the IQC both in writing and during the public hearing.

The overall examination of the cases mentioned shows that the preliminary conclusions of the IQC were well-grounded. Despite the assessee did not adequately rebut such conclusion, the Independent Qualification Commission confirmed the assessee in duty. A review of the case by the Appeal Chamber appears therefore necessary.

2.1. Criminal Proceeding no. * in 2010 conducted by the Prosecution Office at the First Instance Court of Kurbin**

Circumstances of the case

The IQC became aware of this case through an anonymous denunciation, according to which the Assessee failed to investigate and closed the case in order to favor the main suspect, Mr. ***.

A copy of the file was acquired from the prosecutor's office of Kurbin, registered with No. *** on *** 05.2010, for the criminal offence of "*Opposing the public official, who carries out a state duty or provides a public service*" and "*Taking the law into one's own hands*", contrary to Articles 235/1 and 277 of the Criminal Code.

The offences were reported by a public official (head of the Gambling Monitoring Unit of the Ministry of Finance) before the Police Commissariat of Kurbin on *** 05.2010. In particular, in performing his duty he had seized five APEX machines used for illegal gambling in a public facility in the town of Laç; while transporting them to Tirana, he and his four colleagues were obliged to pull over and were seriously threatened by 13 to 15 persons, who subsequently stole the APEX machines from them. Such threats were afterwards repeated in another phone call made to the denouncer by a man whose identity was indicated in his statement to police (along with his telephone number).

All the public officials of the Gambling Monitoring Unit had direct and prolonged visual contact with the offenders. The head of the Unit was also able to identify the leader of the group of offenders, whom he knew personally by the name ***. All other officials could hear the group of offenders call their leader " *** ".

After reporting at the police station in Kurbin, the denouncer noticed a truck (of which he indicated the license plate) on which five second-hand computers for children were

loaded, which were different from the machines seized in Peshkopi (of which he had recorded the serial numbers on the seizure form).

Immediately after the criminal report, the police officers of Kurbin heard the testimony of the inspectors of the Ministry of Finance (victims of the offence) and of their two car drivers. All corroborated the account of the denouncer.

On ***.07.2011, after 14 months of total inertia, the Assessee decided to dismiss the investigations pursuant to letter "a" of the Article 328/1, of the Criminal Procedure Code.

Legal assessment:

- With the results of the investigation the IQC informed the Assessee that the legal conditions for the presumption for dismissal under article E of the Constitution were met and that he had the burden to provide evidence of the contrary. Full reference is made here to the relevant list of IQC findings, which list the shortcomings of the investigation.
- In addition to the flaws listed by the IQC (which are clear and of paramount relevance), it is also evident that the Assessee, prosecutor of the case, failed to acquire the metering of telephone data of Mr. ***** and, in general, to perform telephone interceptions on relevant numbers. With regard to at least one of the suspects the case was substantially ready for indictment, and it would have been *prima facie* extremely easy to acquire further corroborating evidence, as well as solid evidence on the co-perpetrators.
- The IQC reached the preliminary conclusion on the willful nature of the Assessee's omissions. Such statement appears to be corroborated by a set of documents of the case file, which allow to hint – differently from what alleged by the Assessee during the administrative investigation – that he had personal acquaintance with Mr. *****

. Reference is made, in particular:

- to the SMS message which was exchanged between the telephone number of ***** and the telephone number of the Assessee on the date of ***.07.2017 at 22:03;

- to the sequence of simultaneous border crossings at the Tirana airport, after travelling on the same flight, as highlighted in the anonymous denunciation and confirmed by the TIMS records.
- In conclusion, this investigation negatively characterizes the Assessee's proficiency from a threefold point of view:
- the existing evidence against the suspects was very solid and the rest was extremely easy to acquire;
 - the flaws and investigative omissions by the Assessee were blatant;
 - the criminal offence was serious and alarming.

The preliminary conclusions of the IQC were not rebutted by the Assessee. He limited himself to provide an explanation which the International Observers consider as artificial and not believable. Despite this, and despite the gravity of the conduct, the IQC issued no disciplinary sanctions. This, in the International Observers' opinion, needs to be reviewed through an appeal.

2.2. Criminal Proceeding No. * /2017 conducted by the Prosecution Office at the First Instance Serious Crimes Court**

Circumstances of the case

2.2.1. On ***.04.2017, in the outskirts of *** Village in Permet, the police seized 11.650 kg of *cannabis sativa*. Three subjects were suspected to be involved in the criminal activity and detention on remand was imposed on them. The Prosecutor's Office of Permet initiated the criminal proceeding no. *** on *** 04.2017 and two days later he transferred the file to the Serious Crime Prosecutor's Office, classifying the facts as "Trafficking in narcotics" and "Structured criminal group" (articles 283/a and 333 ff. CC).

The Assessee Besim Hajdarmataj, head of the Serious Crime Prosecutor's Office, assigned the case to Prosecutor ****, who on ***.04.2017 partly downgraded the offences, registering the criminal proceeding no. *** /2017 only for the following offences: "Production and sale of narcotics" in the form of collaboration of the

members of the structured criminal group, "*Structured criminal group*", "*Commission of criminal offences from the criminal organization and structured criminal group*", provided for by the Articles 283/28, 333/a, 334/1 of the Criminal Code.

Only three months later (on 7.7.2017) the prosecutor decided to further downgrade the offences, ruling out the existence of any connection to a criminal organization or a structured criminal group. Thence he announced lack of subject matter jurisdiction and transferred the criminal proceeding back to the Prosecution Office at the First Instance Court of Përmet. No investigation against unknown perpetrators was kept open by the Serious Crime Prosecutor's Office with regard to organized crime or trafficking related offences.

The prosecutor's office of Përmet eventually prosecuted three defendants for minor offences (failure to report a crime, theft of electricity).

Legal analysis

2.2.2. The IQC, considering that the evidentiary standard under article 52 VL had been met, informed the Assessee that he had the burden to dispel the presumption for dismissal under article E of the Constitution. The International Observers concur that the prosecutorial investigation was affected by the shortcomings listed in detail in the IQC findings (to which full reference is made here). The case at stake was of such unique seriousness (characterized by likely the most significant confiscation of cannabis in Albanian history) that it would have required a proportionally high level of investigative scrutiny and oversight by the Assessee, in the exercise of his duties of investigative backup.

2.2.3. On the contrary, the investigation was shy, short and lacking a strategy. The shortcomings are of such evidence that they reveal the inability to conduct a thorough investigation aimed at the upper levels of the organization. The focus, in fact, was *de facto* only on the arrested individuals, who were prima facie merely involved in material activities. The very short duration of the investigation further confirms the absence of a firm commitment to pursue the criminal structure in its entirety. Against a reasonable

assessment of the facts and common good sense, the serious crime prosecutor eventually ruled out the existence of any element of organized crime or any conduct of drug trafficking, thus downgrading the criminal offences and transferring the case file to the prosecutor's office of Permet.

2.2.4. The Assessee in his written and oral arguments, whilst admitting the paramount seriousness of the criminal offence, argued that in his capacity of chief prosecutor he could play no role in the case, thus he could not be held accountable for its shortcomings.

2.2.5. The International Observers, on the contrary, deem that the Assessee had the right and the responsibility to keenly oversee such case, of whose existence and importance he admittedly was fully aware. Specifically:

- he should have acquired constant and timely information from the case prosecutor about the progress of the case. Under the Law on Public Prosecutor's Office in force at the time, the prosecutor of the case was obliged to answer to such requests, and it does not result from the case file any such request of information to have ever been submitted. Thus the stance of the Assessee of having been "taken by surprise" by the conclusion of the case, rather than being a justification, amounts to a self-accusation.
- Based on the acquired information, the Assessee – given the clear investigative omissions listed in the IQC findings - should have addressed them, by interacting with the prosecutor of the case and by issuing instructions to him. Whether or not the case prosecutor was obliged to obey to the Assessee's instructions is not relevant here. What matters for the Assessee is that he failed to exercise the responsibilities and tools entrusted to him by the law in order to contribute to remedy to the shortcomings of a paramount investigation.

The proper exercise of such powers is quintessential for the implementation of the new Law on Prosecution and for the recreation of public trust in the judiciary: they are, in fact, aimed at ensuring a balanced exercise of powers within the investigations between the chief and the case prosecutor, preventing – through interaction, information and instruction – uncontrolled and uncoordinated actions, as well as mistakes and omissions. When, if not in the most prominent among drug cases, should the Assessee have exercised these powers?

2.2.6. In its final decision the IQC panel, despite concurring about the serious flaws of the criminal investigation, deviated from their preliminary conclusion for dismissal, reasoning that:

- the assessee, chief of office, had no role in the investigation of the case;
- therefore, despite the objective presence of investigative flaws, these could not be object of evaluation in the framework of the Assessee's vetting process

The International Observers disagree on both points:

- Firstly, they opine that the findings against the Assessee are not connected to his "managerial" skills, but rather to his responsibility in the investigation of individual cases. In fact, the duty to contribute to the solution of individual investigations does not fall solely upon the prosecutor to whom the case is assigned, but also (in a backup and control position) upon the head of office. This is made clear by the Law on Prosecution Office, which, when regulating the tasks of the head of office, distinguishes between "*Competences in Heading the Prosecution Office*" (article 42) and "*Competences in Exercising Criminal Prosecution*" (article 43), including among the latter the above mentioned competences to require information and to issue instructions. This conclusion is further confirmed by the fact that article 80 of the Law on Status (which lists the "managerial" tasks of the head of office) refers to a different set of conducts, all of organizational and managing nature.
- furthermore, the wide wording of article E of the Constitution Annex ("*organizational skills*"), which entered into force before the Status Law, includes also the tasks of Assessee as heads of office. It is the case to add that if the assessment of "managerial" skills were excluded from the scope of the vetting, then the proficiency assessment of those Assessee who in the past years exercised exclusively functions of head of office would be *de facto* frustrated and – against the clear intentions of the Constitution Annex.

As a consequence of the above, the decision of the IQC should be reviewed by the Appeal Chamber.

2.3. Criminal Proceeding No. No. * /2013 of the Prosecution Office at the First Instance Serious Crimes Court**

Circumstances of the case

2.3.1. On **.09.2015 and **.10.2015, in the beach of ***, Shkodra, the Albanian Border Police in cooperation with the Italian Guardia di Finanza detected and seized a huge amount of Cannabis Sativa hidden in bags. The approximate total weight was of 780 kg, abandoned by the traffickers during an attempt to smuggle them to Italy. The trafficking was committed by a group characterized by a significant level of sophistication and structure, as made clear not only by the huge amount of drugs seized, but also by the level and extent of instrumental activities perpetrated by the organized group in order to finalize the operations and by the transnational level at which the activities took place. Suffice to say that in order to transport the drugs to the beach, it had been necessary to prepare the ground towards the beach by unloading and levelling 20 trucks of sand: an activity which the telephone interceptions immediately linked to the suspect *** and his group of subordinates (see on this the reasoning of the ruling on detention on remand against the latter and the first instance decision rendered against the other group of suspects).

2.3.2. Upon seizing the narcotics, six subjects were arrested. **** (whose telephone was being wiretapped) was spotted by the police in the whereabouts of the crime scene and was taken for questioning in the police station, but subsequently released.

The case file acquired by the IQC does not show any investigative activities (also of technical nature) to have taken place after the arrests. Those arrested were afterwards tried by the serious crime court and convicted in first instance in May 2016 for the criminal offence of trafficking of narcotics under article 283/A criminal code.

2.3.3. The Assessee took the office of head of Serious Crime Prosecution in March 2016. It was not until May 2017 that ****, without any further investigation performed in between (and on the basis of the very same evidentiary elements available in September 2015), was formally investigated for having collaborated in the trafficking

of narcotics. He was eventually imposed detention on remand on June 2017, but unexplainably, only a few weeks after, and without any known further evidentiary step had been undertaken, or result obtained, the serious crime prosecutor downgraded the legal classification of the criminal offence, and detention on remand was subsequently terminated.

Legal assessment

2.3.4. The IQC, considering that the evidentiary standard under article 52 VL was met, informed the Assessee that he had the burden to dispel the presumption for dismissal under article E of the Annex to the Constitution. The International Observers concur that the prosecutorial investigation was affected by the serious shortcomings listed in detail in the IQC findings (to which full reference is made here, in particular with regard to the failed investigation into the upper levels of the criminal structure), and that the Assessee failed to fulfill his supervisory and backup duties with regard to this case.

2.3.5. In addition, the International Observers note the following:

- When the Assessee took the position of head of the Serious Crime Prosecutor's Office, in March 2016, he was fully aware (as stated by himself in the written answers to the IQC conclusions) of the seriousness of this case and of the need for urgent and intense investigative action.
- Despite this, the investigation was totally inactive for more than one year, until the Assessee finally substituted the prosecutor of the case. The Assessee was unwilling or incapable of addressing this situation, limiting himself (allegedly) to requesting, to no avail, information from the case prosecutor. No trace of such unanswered requests is in the case file: but if indeed there had been such non-responsiveness from the prosecutor of the case, the lack of investigation would have been immediately

evident to the Assessee, and his omission of substitutive action would have appeared even more clearly.

- The Assessee (in his capacity of head of office) should have exercised with the greatest scrutiny his oversight and control duties in a case of such sensitivity (characterized by a momentous quantity of narcotics, a high level of sophistication of the involved groups, the transnational connection with the Italian mafia).

2.3.6. The IQC deviated from its preliminary conclusion for dismissal, reasoning that the Assessee's omissions fell under his responsibility as Chief Prosecutor, and as such they could be not evaluated in the vetting process. The International Observers, as already explained disagree on this stance, recalling here in full the reasoning already made above under 2.2.6).

2.3.7. This conclusion applies *a fortiori* in this case, considering that that for many months, between March 2016 (when the assesses started his tenure) until the end of that year, the Assessee was still vested with the full substitutive power enjoyed, under the previous version of the law on Public Prosecutor's Office, by the head of office. Nor, even after the legislative amendments of 26 November 2016, did the Assessee issue any instruction to the case prosecutor until his substitution.

2.3.8. In conclusion, considering the paramount seriousness of the case at stake and the extremely high quality of the evidentiary elements *prima facie* available since the outset of the investigation, the Assessee clearly fell short of his oversight duties.

The Assessee failed to provide evidence against the preliminary conclusions reached by the IQC, thus an appeal is necessary in order for the decision of the IQC to be reviewed by the Appeal Chamber.

2.4. District Prosecutor's Office Durrës – Proceedings against Judge

Circumstances of the case

2.4.1. Tirana District Prosecutor's Office registered the criminal proceeding no. *** /2012 upon the report of citizen ****. On *** 2.2013 the Tirana District Prosecutor's Office (hereafter PO) registered the name of Ms **** (judge at Tirana District Court) as suspect for the criminal offence of "Abuse of office" as per art. 248 of the Criminal Code of the Republic of Albania.

2.4.2. On ***.06.2013, the Tirana District Prosecutor's Office declared lack of jurisdiction because of the conditions set forth in art. 78 of the Criminal Procedure Code (hereafter CPC) and transferred the case to the Durrës District Prosecutor's Office, which on ***.7.2013 registered the case and continued the investigation; the case was assigned to prosecutor ****, who undertook necessary investigative steps;

2.4.3. On ***.11.2013 the assessee, head of the office, took over the case and concluded it as follows: *"From the analysis of the acts of this criminal proceeding, it is established that the competent authority for the continuation of the criminal proceeding (was) not the Durrës District Prosecution Office, issuing decision declaring lack of jurisdiction and transfer of the case to the District Prosecutor's Office of Elbasan, which registered the*

case on ***.12.2013. Only five days after, on ***.12.2014, the prosecutor assigned to the case decided to dismiss the criminal proceeding.

Legal evaluation

2.4.4. The IQC, considering that the evidentiary standard under article 52 VL was met, informed the Assessee that he had the burden to dispel the presumption for dismissal under article E of the Annex to the Constitution. The International Observers concur that the case was affected by the shortcomings listed in detail in the IQC findings (to which full reference is made here).

The IQC, in its final decision, did not modify its findings about the procedural flaws. They concluded, though, that they could not to be evaluated in the vetting process because they pertained to his functions as chief prosecutor, and not to his prosecutorial functions.

The International Observers disagree on this: the Assessee took over the case from *** and he issued the final decision, thus becoming the prosecutor of the case and assuming the responsibility for the investigation and its flaws. It has to be noted that the decision of the Assessee was at odds with the organizational rules of the prosecutor's office in force at the time of events, as acknowledged by the HPC in its letter Prot. No. *** , dated ***.04.2019, because the Assessee arrogated the case without previously formally self-assigning it.

2.4.5. Furthermore, the International Observers stress the following:

- the transfer decision fallaciously expanded (through a confused reasoning) the exceptional discipline of article 78 CPC (which is limited to cases in which “a judge or prosecutor is a defendant or victim of criminal offenses” to cases in which a family member of a judge or a prosecutor might have (but was not yet) an investigated person.
- the legal basis used by the prosecutor in the enacting clause of his decision was not consistent with the reasoning – read art 76 instead of art 78;
- the reasoning was of poor quality, and unable to clarify the exact relevance of the personal relation of the Durres Prosecutor in order to the transfer of the case. All this in a context in which the prosecutor of the case (Ms. ***) had already performed the investigation and planned its last important steps;
- the reasoning of the transfer decision is hazy also with regard to the issue of the distance from Tirana. The criterion adopted (distance/highway measurement) appears vague, inconsistent with all other cases in which the prosecutor of Durres plainly accepted proceedings transferred from Tirana under article 78 CPC. It is, stunningly, adopted only at the final stage of the investigation.

In light of the above, it is the opinion of the International Observers that the Assessee failed to address the burden of proof imposed on him by the IQC, making the appeal review necessary.

2.5. Criminal proceeding no. * /2015 of the Prosecution Office at the First Instance Court for Serious Crimes.**

2.5.1. The investigation was initially conducted with regard to the following criminal offences: “*Production and sale of narcotics*”, in complicity, in the form of structured criminal group, provided for by articles 283/2 and 28/4 of the Criminal Code, “*Creation of a structured criminal group*”, stipulated by article 333/a of the Criminal Code and “*Commission of the offences by the structured criminal group*” provided for by article 334 of the Criminal Code.

After several months, the Assessee (back then head of the Serious Crime Prosecutor’s Office) self-assigned the case (until then investigated by another colleague) and issued the final decision. He gave a new classification to the criminal offences, ruling out the existence of organized/structured criminal groups, thus declining the jurisdiction of the Serious Crime Prosecutor’s Office. In light of the above, the statement of the IQC (according to which the Assessee acted in this case merely as chief of office and all responsibility for the shortcomings in the investigations rested solely with the prosecutor of the case) is incorrect, in that - by self-attributing the case and issuing the final decision - he assumed the case and the connected direct responsibility of not completing its investigation.

2.5.2. The International Observers note that the case was characterized by the seizure of the momentous amount of 670 kg of narcotics (which at the moment of the seizure were about to be transported elsewhere, according to the interceptions) and by the involvement of at least five co-perpetrators. Under such circumstances, before ruling out the options of trafficking (art. 283/A CC) or of structured groups (art. 333/A or 334 CC) the Assessee should have previously performed a proper investigation.

In the case file available to the International Observers there is no trace, for instance, of the analysis of financial flows of the suspects, or of the phone metering of the contacts of the suspects (with special focus on contacts with third subjects common to all the suspects, or on international contacts).

2.5.3. The mere fact that eventually the Court convicted the defendants for the less serious offence of “*Production and sale of narcotics*” by no way can imply (as the Assessee would like to suggest) that the Court affirmed that the Assessee’s investigation had been performed properly on the existence of a structured criminal group: simply, this fell outside the scope of jurisdiction of the Court. It is just the case to add that the Court was not provided (because the Assessee did not try to collect it) with any evidentiary element which might have induced the amendment of the charges.

3. With regard to the assessment of assets

3.1. Financial shortcomings

The financial analysis shows that the resources and savings declared by the Assessee in his entry declaration and during his tenure, when compared to the Assessee’s recorded and declared expenses, and deducted of the minimum living cost, are not sufficient in the years from 2010 through 2013, with an overall exposure of 980.888 ALL.

The Assessee failed to provide sufficient explanation of this shortcoming, and the reasoning of the IQC is not satisfactory on this point.

3.2. The Assessee’s place of residence

In his Vetting declaration Besim Hajdamataj does not declare owning immovable properties, nor using any on his own, while he indicates as residence the address Njesia nr. ***, Rr. ***, pallati Nr. ***, Shka *** ap. *** Tirana. According to the Assessee (see his reply to a question from the IQC) this residence belongs to his brothers *** and *** Hajdamataj, however the off the plan contract n. *** reg. nr. *** col. dated *** September 2007 (pursuant to which the apartment was purchased for the price of 52.580 Euro, paid on the day of the contract) is signed only by ***. The Assessee allegedly lives there as a "guest" together with his brother ***, his family, his mother and his sister, while the brother *** is in fact residing and living in the United Kingdom: an overcrowded setting which per se raises doubts.

The Assessee, a permanent user of the apartment, was asked to provide evidence of the sources of financing of the apartment and their legitimacy. He replied listing the sources of the apartment as follows:

- The brother *** covered 30.000 Euro + 1.000.000 ALL for the furnishing;
- The brother *** covered the remaining part of the costs (22.580 Euro);
- The Assessee contributed with 100.000 ALL to the furnishing of the room he occupies.

At the conclusion of the investigation, the legitimacy of the sources of creation of the asset remained not convincingly proven; in fact:

- there is no conclusive evidence showing the financial capacity of the Assessee's brother *** : the documents provided, besides lacking the formal requirements for

their admissibility, are partial, incomplete and not suitable to confirm the financial capacity of the brother to sustain such expense;

- there is no proof that such amount was ever transferred to Albania or otherwise delivered by him;
- there is no conclusive evidence showing the financial capacity of the Assessee's brother *** to finance the amount the assessee declared, nor any conclusive evidence confirming the existence of the loan received by him from ****, nor any conclusive evidence showing he could pay back such loan to **** by 2012.

Given the above, the relationship of the assessee with this immovable property should be further clarified because, contrary to what stated by the IQC in its decision, the principle of "proportionality" in the investigation may not lead to limit the investigation, when clarifications is needed about issues which are pertinent and relevant for the re-evaluation of the assessee.

3.3. Cash in the amount of 6.000 Euro and 4000 GBP

The Assessee received gifts from his brother *** Hajdarmataj as follows:

- EUR 3,000 declared on the periodical declaration of year 2007;
- GBP 4,000 was declared on the periodical declaration of year 2008;
- EUR 3,000 was declared on the periodical declaration of year 2009;

The Assessee explained such gifts were handed over by his brother *** . However, the Assessee failed to provide conclusive evidence confirming the financial capacity of the brother to legitimately justify such amounts, nor any evidence showing those amounts were delivered to Albania, especially in consideration of the other

expenses allegedly incurred by the same brother in Albania in the same years (i.e. point 3.2 of this recommendation) and the cost of living in the United Kingdom, which the IQC failed to consider contrary to what the jurisprudence of the Appeal Chamber requires.

3.4 Use of vehicles

During the administrative investigations, the financial Supervisory Authority by communication no. *** prot., dated *** 11.2018, informed that the “ *** ” Sh.a. Insurance policy TPL with series no. *** (referred to a car with license plate no. TR...U and coverage period *** 12.2010 – *** 12.2011 and owned by ***) was stipulated in favor of Besim Hajdarmataj.

In the questionnaire dated 24.11.2018, the Assessee was asked to give explanations on the vehicle for which such insurance was purchased, initially denying and finally failing to clarify his relationship with the vehicle.

4. Conclusions

The facts and circumstances highlighted above, with regard to the proficiency assessment, the asset assessment and the overall assessment of the case, call for a thorough review of the case by the Appeal Chamber and a modification of the decision.

Because of the foregoing, the International Observers recommend an appeal against the decision issued by the Independent Qualification Commission against Besim Hajdarmataj on 16 October 2019.

Tirana,

International Observer



International Observer/

International Observer