

Tirana, on 28.09.2020

REQUEST

Object: Annulment of the Decision of the Assembly of Albania No. 82/2017 “On the approval of the list en bloc of the candidates appointed in the Re-evaluation Institutions, according to Law no. 84/2016 “On the transitional re-evaluation of judges and prosecutor in the Republic of Albania”.

To: THE ASSEMBLY OF THE REPUBLIC OF ALBANIA
Bulevardi “Dëshmorët e Kombit” nr. 4
T I R A N A

Directly involved: THE PRESIDENT OF THE REPUBLIC
Bulevardi “Dëshmorët e Kombit” , 1000.

THE OMBUDSMAN
Rruga “Vëllezërit Huta”

THE INTERNATIONAL MONITORING OPERATION
Rruga e Kavajës, “Godina e ish Lidhjes së Shkrimtarëve dhe Artistëve”

T I R A N A

For the knowledge of: THE EMBASSY OF THE UNITED STATES OF AMERICA
Rruga “Stavro Vinjahu” nr. 14

THE OFFICE OF THE EUROPEAN UNION
Rruga “Papa Gjon pali i II”, ABA Centër, kati 17

THE EMBASSY OF THE UNITED KINGDOM
Rruga “Skënderbeg”, nr. 12

THE EMBASSY OF THE REPUBLIC OF FRANCE
Rruga “Skënderbeg”, nr. 14

THE EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY
Rruga “Skënderbeg”

THE EMBASSY OF THE REPUBLIC OF ITALY

Rruga “Papa Gjon pali i II”, 1010

T I R A N A

Legal basis: Constitution of the Republic of Albania, Articles 179/b, B/1, B/2, B/3 (a) of the Annex, C (5)-(12) of the Annex; Law no. 84/2016 “On the transitional re-evaluation of judges and prosecutor in the Republic of Albania” articles 6-11 and the Code of Administrative Procedures of the Republic of Albania, Articles 2/1, 3/6 and paragraph 7(a) and (b), 107, 114, 117.

Applicant:

Besnik MUÇI

Rr. “Presidenti G. W. Bush”, Pall nr. 1 (Kasmi), kat 3, nr. 15, 1010

T I R A N A

Honourable Mr. Gramoz Ruçi, Chairman of the Assembly of the Republic of Albania,

I

I, Besnik Muçi, former member of the Constitutional Court of the Republic of Albania, ask from the Assembly, President, Ombudsman and the International Monitoring Operation¹ which exercises its administrative activity in the territory and jurisdiction of the Republic of Albania, to annul as illegal the Decision of the Assembly of Albania no. 82/2017 “On the approval of the list en bloc of selected candidates in the Re-evaluation Institutions, according to Law no. 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania” regarding the election as members of the Special Appeals Chamber of applicants Ardian Hajdari, Rezarta Schuetz, Natasha Mulaj, Albana Shtylla, Sokol Çomo and Dariel Sina Public Commissioner, because at the time of election these individuals did not meet the constitutional and legal criteria to be elected to the respective functions.

I have been made aware² of the data which prove the fact that these individuals do not meet the criteria to be elected to these positions, after 21.11.2019, when the above in the capacity of

¹ Joint EU-US mission under an agreement with the Albanian Government to monitor and control the re-evaluation process of Judges and Prosecutors. <https://eeas.europa.eu/sites/eeas/files/imooofficial26.01.2017.pdf>
https://eeas.europa.eu/sites/eeas/files/imooofficial26.01.2017_annexe.pdf

² Letter dated 23.01.2020 and 03.02.2020 sent to the Assembly of the Republic of Albania, and letters dated 27.01.2020 sent to the International Monitoring Operation, The High Justice Council and the Ombudsman.

Members of the Trial Panel of the Special Appeals Chamber and the Public Commissioner have given the decision no. 32 dated 21.09.2019 regarding me as a former subject of re-evaluation.

The 2016 amendments to the Constitution of the Republic of Albania³ have provided for the re-evaluation process for judges and prosecutors in Albania. The Law no. 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania” defines principles, rules, methodology, procedures, standards and the establishment, organization and functioning of re-evaluation institutions, including the International Monitoring Operation and its role.

According to the Constitutional and legal provisions, the first step of this process was the establishment of the Institutions that would carry out the re-evaluation, firstly the International Monitoring Operation⁴ and then the Independent Qualification Commission⁵, Public Commissioners⁶ and the Special Appeals Chamber⁷. The IMO was the first institution to be established because the latter together with the President of the Republic or the Ombudsman and the Assembly, based on **Article 179/b, Articles B/1, B/3(a) and Article C(5)-(12) of the Annex to the Constitution as well as Articles 6-11 of Law no. 84/2016**, had to elect and did elect the members of other Institutions IQC, SAC and PC.

Following the procedure of electing the members of IQC, PC and SAC, since the President refused to exercise the obligations imposed by the Constitution,⁸ the Ombudsman organized the process of application of the candidates and verification of the fulfilment of the formal criteria. According to Article C(6) of the Annex of the Constitution, the lists of applicants who met the formal criteria for each position and those who did not meet them⁹ were sent to the IMO. The latter had the obligation to verify and evaluate the candidates according to the criteria and to make recommendations to the Assembly.

The Ombudsman and the IMO submitted to the Assembly two lists, one with candidates who met the criteria and the other with candidates who did not meet the criteria. The Assembly set up a 6-member committee, members of the parliament to review the lists. Pursuant to Article C(8) of the Annex to the Constitution¹⁰, the Commission with five votes transferred candidates from the list

³ Article 179/b and the Annex to the Constitution.

⁴ Hereinafter “IMO” in this document.

⁵ Hereinafter “IQC” in this document.

⁶ Hereinafter “PC” in this document.

⁷ Hereinafter “SAC” in this document.

⁸ Article C(6) last paragraph of the Annex to the Constitution.

⁹ Article C(7) of the Annex to the Constitution.

¹⁰ “Within three days of receiving the list of applicants who meet the formal criteria, the list of applicants who do not meet the formal criteria and the list of IMO recommendations, the Assembly shall create an ad hoc committee with six members consisting of equal representatives from the majority and opposition. The committee may with at least four votes move a candidate from the list of those who do not meet formal criteria to the list of those who do. The committee may with at least five votes move an applicant from the IMO’s recommendations list to the candidate list

of those who do not meet the criteria according to the IMO, to the list of those who meet the criteria or to the list of candidates for voting. The Assembly then proceeded with the election of members of the Re-evaluation Institutions from the list of candidates who met the criteria.

II

Determination of the non-fulfilment of the criteria by the Ombudsman and the IMO

The fact that the election of some members of the SAC and PC was carried out illegally is also proven by the official communications¹¹ between the institutions responsible for receiving applications, conducting evaluations and sending lists with candidates who meet the criteria and those who do not meet the criteria: the Ombudsman, the IMO Board of Directors and the Assembly of Albania.¹²

Specifically, the fact that the SAC members **Ardian Hajdari, Rezarta Schuetz and Natasha Mulaj** did not meet the criteria was also ascertained by the Ombudsman and the IMO Board. In exercising constitutional¹³ and legal¹⁴ prerogatives following the application of these persons, the Ombudsman, after verifying the fulfilment of the criteria placed these candidates on the list of those who **did not meet the formal criteria for the position they applied for**. With the letter no. 32 dated 17.02.2017 addressed to the IMO, the Ombudsman found that from the careful review of the files of applicants who have expressed interest in being part of the re-evaluation institutions 29 candidates met the formal criteria provided by Article 6 of Law 84/2016 and 163 candidates did not meet them. *Applicants Ardian Hajdari, Rezarta Schuetz and Natasha Mulaj were on the list of candidates who do not meet the criteria and specifically did not meet the professional experience criterion.*

On 03.03.2017 Mrs. Genoveva Ruiz Calavera, Chairwoman of the IMO Board of Directors, resubmitted to the Ombudsman the list of candidates together with the evaluations and recommendations of the IMO observers for each candidate. Here, too, applicants **Ardian Hajdari, Rezarta Schuetz and Natasha Mulaj result in the list of candidates who did not meet the criteria and specifically did not meet the professional experience criterion.**

for voting. Within ten days of its formation, the ad hoc committee shall forward the candidate list for voting for each position to the ad hoc committees for selection. The other two lists shall not be forwarded for voting."

¹¹ The letter of the Ombudsman no. 8/1 dated 03.02.2020 sent to Besnik Muçi "Response to request for information", where among other things it is stated that "...attached you can find a copy of the documentation certifying the procedure followed by the institution of the Ombudsman in cooperation with the International Operation of the Monitoring for the verification of the candidacies for member of the institutions of transitional re-evaluation of judges and prosecutors, as well as the unified copy in the form required by the law of biographies for the members of these institutions A. Hajdari, R. Schuetz and N. Mulaj".

¹² The Assembly of the Republic of Albania and the IMO have not responded to my requests made pursuant to the right to information.

¹³ Article C(6) and (7) of the Annex to the Constitution.

¹⁴ Article 7 of the Law no. 84/2016.

The Ombudsman with letter no. 57 dated 03.03.2017 sent the lists to the Assembly of the Republic of Albania where again the applicants **Ardian Hajdari, Rezarta Schuetz and Natasha Mulaj** result in the list of ***candidates who do not meet the criteria and specifically did not meet the professional experience criterion. In this list was also the applicant for PC Dariel Sina.***

Also, the applicant **Luan Daci**¹⁵ did not meet the criteria and was on the list of ***candidates who did not meet the criteria.***

Following this moment, the Assembly, not taking into account the assessments of the Ombudsman and the IMO, issued the Decision no. 14 dated 06.03.2017 “On the return of files of candidates who have expressed interest in running for re-evaluation institutions to the Ombudsman for replenishment of documents and reopening the call for expressions of interest by new applicants for the positions of all members of the re-evaluation institutions”. This decision is **in breach of the provisions of Article C(8)-(12) of the Annex to the Constitution and Articles 8-11 of Law no. 84/2016, which provide for the rights and obligations of the Assembly in electing members of re-evaluation institutions. These articles do not give any competence to the Assembly in the process of application, verification of conditions and listing of candidates.**

With this act, the Assembly has directly intervened in the competences that the Constitution recognizes only to the President and in case of non-exercise by him to the Ombudsman. This act was carried out to control this process politically, forcing the Ombudsman to send to the Assembly a list of names that he wanted and that would be politically obeyed.

The Assembly, **represented by the former Secretary General, the current member of the SAC Albana Shtylla**¹⁶, with Letter no. 811/6 dated 10.03.2017 sent for implementation to the Ombudsman the Decision of the Assembly no. 14 dated 06.03.2017 together with the files of the applicants.

But because the procedure of receiving applications, verifying the criteria and sending the files of applicants to the Assembly was provided in detail in the Constitution¹⁷, the Ombudsman did not accept these files.

Being in this situation, the Assembly issued another Decision in open violation of the Constitution, Decision no. 18 dated 16.03.2017 “On the return of files of candidates who have expressed interest

¹⁵ It results that four of the seven current members of the SAC did not meet the criteria according to the Ombudsman and the IMO.

¹⁶ Pursuant to Article C(5) of the Annex to the Constitution, the function of the Secretary General is a pure political function because it does not represent the Chairperson in the managerial functions but in the exercise of political functions in relation to the other institutions.

¹⁷ Article C(6) and (7) of the Annex to the Constitution.

in running for re-evaluation institutions to the Ombudsman for replenishment of documentation”. The Assembly, which again was **politically represented by the former General Secretary, the current member of the SAC Albana Shtylla**, sends this decision with letter no. 939¹⁸ dated 17.03.2017 for implementation to the Ombudsman, who protocols it in the entry with number 69 dated 17.03.2017.

After being acquainted with the Decisions of the Assembly no. 14 dated 06.03.2017 and no. 18 dated 16.03.2017 the Ombudsman with letter no. 67 dated 17.03.2017 informs the Chairwoman of the IMO Board of Directors Mrs. Genoveva Ruiz Calavera, noting that she is already aware of the developments and states that *“In the circumstances where the Albanian Parliament has issued decision no. 18/2017, for the implementation of which it is necessary to complete the documentation by the applicant candidates, who after the development of relevant procedures by the Ombudsman and the evaluation and recommendations of the IMO, are listed in the list of candidates who do not meet the criteria legal form for each position, the need arises for further cooperation between us for the success of this process”*.

Following the decisions of the Assembly, the Ombudsman, contrary to its constitutional and legal rights and obligations, with letter no. 69 dated 17.03.2017 calls for replenishment of documentation until 27.03.2017. Current SAC members **Ardian Hajdari, Rezarta Schuetz and Natasha Mulaj** submitted additional documents **within 10 days**.¹⁹ **The Ombudsman together with the two IMO observers Theo Jacobs and Peter Ainswoth** on 28.03.2017 drafted a new protocol for the re-evaluation of candidates, which were *already evaluated once*, thus giving them again the opportunity that after submitting the documents go to the list of those who meet the formal criteria.

Only 3 days after the end of the deadline, the Ombudsman with letter no. 85 dated 30.03.2017 forwarded to the IMO the list of candidates, redone according to the order of the Assembly. **Now the list of candidates who meet the formal criteria increases from 29 to 84 and those who do not meet it decreases to 109.**

The IMO with the reference letter (2017) 1848654-06.04.2017 sent to the Ombudsman has forwarded the assessments and recommendations of the IMO observers regarding the lists of applicants.

Following this, finally, the Ombudsman with letter no. 104 dated 07.04.2017 sends to the Assembly of the Republic the lists of candidates who meet the criteria and those who do not meet the criteria and the evaluations and recommendations of IMO observers regarding the lists of applicants and files with documents of each applicant.

¹⁸ Number “9” is corrected.

¹⁹ There is no document showing what additional documents were submitted.

Now, after filling in the documents and re-evaluating,²⁰ the candidates **Ardian Hajdari and Natasha Mulaj** move to the list of those who meet the formal criteria. While the other candidate **Rezarta Schuetz**, even after this procedure, contrary to the Constitution and the law, continues to remain on the list of those who do not meet the formal criteria. PC applicant **Dariel Sina** now appears on the list of those that meet the criteria.

During the procedure in the Assembly with a clear political decision of the deputies, without any verification or technical legal justification, the candidate **Rezarta Schuetz** is voted and directly passes from the list of those who do not meet the formal criteria to the list for voting.

III

Regarding the election of the judges of the Special Appeal Chamber

Point 5 of Article “C”, “*General Provisions for the Commission and the Appeal Chamber*” of the Annex to the Constitution, entitled “*Transitional Qualification Assessment*”, provides that members of the Commission and judges of the Appeal Chamber must have **not less than 15 years of experience as a judge, prosecutor, law professor, advocate, notary, senior employee in public administration**, or other legal professions related to the justice sector.

Article 6 of Law 84/2016, “*On the transitional re-evaluation of judges and prosecutors*”, provides: “1. Member of the Commission and **Appeal Chamber** shall be appointed the Albanian citizen **who fulfils the following conditions**:

- a) *has completed the second level of university law studies with the degree ‘master in science’ in Albania or law studies abroad and has obtained an equivalent degree according to the rules on equivalencing diplomas foreseen in the law;*
- b) *a **professional experience of not less than 15 years** as judge, prosecutors, advocate, professor of law, civil service employee at senior level or another recognised activity in the field of administrative law or in other fields of law;*
- c) *a **high score for his or her professional and ethical skills** and moral integrity, as long as he or she has been subject to previous evaluation;*
- ç) *has not held a political post in the public administration or a leadership position in a political party for the last 10 years;*
- d) *is not under criminal investigation and has not criminal record in connection with the commission of a crime, a criminal misdemeanour deliberately or has not been not subject of the limitations provided in the law on guarantee of the integrity of the elected, appointed persons or who exercise public functions;*

²⁰ A pure political act because the names were already been determined and they were given the opportunity to “complete” the documents.

dh) has not been dismissed for disciplinary reasons or does not have any disciplinary measure in force under the law at the time of application;

e) has not been a member, collaborator or favoured by the State Security before 1990 and has not been a collaborator in the meaning Law no.45/2015 “On the right of information to the documents of the former security service of the Popular Socialistic Republic of Albania”;

ë) has not been judge, prosecutor, legal advisor or legal assistant during the last two years prior to their nomination;

f) has not been member of the High Level Experts of the ad hoc committee for the reform in the justice system, or expert appointed by the political parties and the Ministry of Justice;

g) should not be older than 65 years;

gj) very good knowledge of English language;

2. Compliance of the above mentioned criteria shall be taken into consideration in particular based on the dates mentioned above:

a) academic grades in the field of law;

b) special experience of the candidate in a certain field of law;

c) seniority in the profession;

ç) study experience and professional experience abroad;

d) having an average mark of not less than 8 in case it has completed the second level of university law studies with the degree ‘master in science’ in Albania or law studies abroad and has obtained an equivalent degree according to the rules on equivalencing diplomas foreseen in the law.”

a- Election of the SAC Judge Mr. Ardian Hajdari

The election of the member of the Special Appeal Chamber **Ardian Hajdari** is illegal as the constitutional principle of **Article 179/b first paragraph** has been violated and he has not met four of the five²¹ constitutional and legal criteria needed for this position.

Firstly, there was information about this person from state institutions regarding **the carrying out of the criminal activity of Corruption in Justice**²² during the time he exercised the function of lawyer. For this reason, his election has directly violated the basic constitutional principle of the re-evaluation process provided by Article 179/b of the Constitution, according to which **“In order to re-establish the proper function of rule of law and true independence of the judicial system, as well as the public trust and confidence in these institutions a re-evaluation system is established.”**. The appointment as a member of the SAC, the most important and only judicial institution that will re-evaluate judges and prosecutors, of **an individual suspected of criminal activities of corruption in the judiciary** not only cannot guarantee the return of public confidence in justice institutions but can **severely damage the image of justice in Albania, the European Union and the USA and completely lose the public trust in these institutions.**

²¹ Article 6(1)(a)-(d), (gj) of the Law no. 84/2016.

²² www://exit.al/2020/01/tjeter-komisioner-i-vetingut-i-akuzuar-per-probleme-te-figures/, accessed on 14.06.2020.

This individual does not meet in this way the criteria provided by **Article 6(c) of Law no. 84/2016** according to which the candidate must have received a high assessment of his professional skills, ethics and moral integrity, in case he has been subject to previous evaluation. Due to his experience as a lawyer in institutions of negligible importance²³ from a legal point of view and his relationship with the judiciary, there have been no assessments of his professional skills and moral integrity.

As regards the part of work experience **as a lawyer, there is an assessment by the institutions of the Albanian state, namely the State Intelligence Service** (hereinafter the “SIS”) which Law no. 8391 dated 28.10.1998, charges with the task of collecting information regarding the corruption activity of public service employees, including in the judicial system in Albania.

Concretely, according to the information broadcasted by the electronic media,²⁴ in 2006 the SIS, in exercise of its legal obligations, sent a letter to the President of the Republic no. 3170 dated 27.12.2006, with the object “**On corruption in the justice system**”. In this letter, among other, it informed the President that “*During 2006, the SIS collected data on suspicions and corrupt relations in the justice system in which the forms, mechanisms and their perpetrators are identified*”.

On page 12, third paragraph of this letter, the President of the Republic is informed that “**..., judge at the Judicial District Court is implicated in passive corruption in cases regarding the increasing of age. He collaborates with the lawyer Ardian Hajdari and his father ... who play the role of mediator for people who want to increase their age in exchange for the benefit of 1500 to 2000 euros**”. Thus, it results from officially documented data that during the exercise of the profession of lawyer, Ardian Hajdari is directly implicated in corrupt actions which include **not only serious violations of his ethics and moral integrity but also a criminal offense, the crime of “Active Corruption of judge, prosecutor and justice officer”, provided by Article 319 of the Criminal Code.**

So, this individual has documented suspicions that he has committed criminal activities during the exercise of the *function of lawyer, a period which has served as seniority and professional experience in applying for a Member of the SAC, while according to Article 6(1)(c) of Law no. 84/2016 would suffice the fact that he did not have high scores for his professional and ethical skills and moral integrity to not be elected to this position.*

Secondly, Mr. Ardian Hajdari does not meet the requirement of 15 years of experience, according to the provisions of Article C(5) of the Annex to the Constitution, Article 6(1)(b) of

²³ According to the résumé submitted to the Ombudsman: jurist in the Municipality of Vau i Dejës and jurist in the Koman Hydropower Plant.

²⁴ www://exit.al/2020/01/tjeter-komisioner-i-vetingut-i-akuzuar-per-probleme-te-figures/, accessed on 14.06.2020.

Law no. 84/2016. Thus, referring to the minutes of the Ad Hoc Committee of the Assembly, dated 02.06.2017, for the selection of members of the Appeal Chamber, **it turns out that Ardian Hajdari has declared false information, stating that he has exercised the function of lawyer for 17 (seventeen) years.**²⁵ To prove his professional experience as a lawyer he has submitted 17 (seventeen) annual permits issued by the National Chamber of Advocates.

Contrary to what he stated in the Ad Hoc Committee of the Assembly, in his CV Ardian Hajdari stated that he has practiced the profession of lawyer from 2002-2004, as well as from 2006 onwards. If we take the data of his CV for being correct, he has practiced the profession of lawyer for a maximum of 13 years.

So, the current member of the SAC Ardian Hajdari has lied either before the Ad Hoc Committee of the Assembly or in the data he has submitted in his CV. In these circumstances, **Ardian Hajdari turns out to have stated untrue information before the Assembly, stating²⁶ that he has practiced the profession of lawyer for 17 years. Considering the fact that the principles of criminal liability for false declaration apply to the statements before the ad-hoc Committees of the Assembly, he has consumed the elements of the criminal offense of “False Evidence” provided by Article 306 of the Criminal Code.**

The other professional experience presented in his CV, which is an assistant judge, **is not included** in the list of professions provided for in Article 6(1)(b) of Law 84/2016.

At this point it should be noted that the possession of a permit or license to practice the profession does not prove the actual exercise of the profession. Specifically, although Ardian Hajdari had a license to practice law, in the period during the years 2005-2006, he did not work as a lawyer, but as a lawyer in the Municipality of Vau i Dejës. Also, during the period 06.11.2000-01.12.2001, referring to his biography, he worked as a lawyer at the Koman Hydropower Plant.

It is worth noting that the profession of lawyer, which is also a commercial economic activity, in addition to the license to practice the profession by the National Chamber of Advocates, is practiced only after meeting **the other legal requirement of registration with the Tax Office and the Institute of Social Security of the respective city.** Thus, the time of starting to practice the profession of lawyer and the relevant duration should result from the data reflected in the tax authorities and the Institute of Social Security. These data are submitted by the taxpayer, regularly registered and equipped with the relevant tax certificate.

²⁵ Please see his declaration in the respective page of the minutes.

²⁶ Please see page 31 of the minutes of date 02.06.2017, where the candidate Ardian Hajdari answers to the question of the deputy Mr. Eduard Halimi that he had worked almost 17 years as a lawyer (since May 2000).

Specifically, in Article 30, “*Equipment with tax certificate*”, of Law no. 8560,²⁷ dated 22.12.1999, “*On Tax Procedures in the Republic of Albania*”, provides that:

*“1. Every person acquires the right to exercise economic activity **only after registering in court.** After this registration, he is **obliged to request the provision of a tax certificate.** This request is presented in the tax branch of the district, where the person has the headquarters of his activity ...*

2. To obtain a tax certificate one must:

a. Legal and natural persons with an annual turnover greater than the VAT registration limit, together with the request, must submit to the tax authorities, in addition to the court decision approving their registration, the statute and the founding act, as well as information contact for each taxpayer representative.

b. Legal and natural persons with annual turnover below the VAT registration limit, must submit the court decision approving their registration and contact information for each taxpayer representative...

*3. **Small business taxpayers are obliged to repeat the tax certificate every year**, as defined in Law no. 8313, dated 26.3.1998, “On the tax on small business”, while taxpayers registered for VAT are registered only once at the moment of starting the economic activity.”*

In the file submitted to the Ombudsman²⁸ there is no information on when Ardian Hajdari was registered with the tax authorities in the private activity as a Lawyer, but from the public data of the National Registration Center it **results that he was registered for the first time with the tax authorities to practice the profession of lawyer on 27.04.2007,**²⁹ being provided with the tax certificate with the unique identification number of the subject K76627002O. **No verification of these facts has been performed by the IMO, which according to the Constitution and the Law, is the state body in Albania that has the obligation to perform it.**³⁰

Based on the above, *before this date Ardian Hajdari has not been registered with the tax authorities, has not paid social security contributions for practicing the profession of lawyer and, as a result, he does not legally prove that he exercised his function before 27.04.2007. Therefore, it is not proven that this citizen has at least 15 years of work experience as a lawyer.*

In these conditions, if Ardian Hajdari claims that he has practiced the profession of lawyer in violation of the law, even before 27.04.2007, this period not only cannot be counted as professional experience or seniority, but this fact can prove that he has violated tax legislation during this period, **committing tax evasion and thus not only questioned his ethical and moral integrity but also committed the criminal offense of “Failure to pay taxes and duties” provided by Article 181**

²⁷ This law has been in force in the moment when Mr. Ardian Hajdari alleges to have started the profession of lawyer.

²⁸ In the moment of candidacy to the re-evaluation institutions, according to the study of the Association Lex ferenda.

²⁹ Please find attached the tax certificate from the web.

³⁰ Article B(3)(a) and C(7) of the Annex to the Constitution obliges the IMO to conduct verifications and recommend to the Assembly regarding the qualification and election of the candidates for the positions of members of the Commission, judge of the Appeal Chamber and Public Commissioner.

of the Criminal Code. Even for this fact, the IMO has not performed any verification, although some of these verifications could be performed by the on-line office, such as whether it is registered as a tax entity, when it is registered, if it has paid its obligations, etc.

Thirdly, Ardian Hajdari does not meet the condition of completing the second level of university law studies with an average mark of not less than 8, according to the provisions of **Article C(5) of the Annex to the Constitution, Article 6(1)(a) and (2)(d) of Law no. 84/2016**. Thus, in the file submitted by Ardian Hajdari to the Ombudsman³¹ and subsequently submitted to the Assembly, results that he has completed his studies at the Faculty of Law of the University of Shkodra “Luigj Gurakuqi” in the full course of 1992 - 1996³² with an average mark of 6.44³³. According to Article 6(2)(d) of Law no. 84/2016 for the verification of the fulfilment of the criteria of point (1), i.e. if he has completed the second level of university studies in law with the degree “Master of Science” in Albania, the applicant must have had an average mark of not less than 8.

It is inexplicable how the **Ombudsman with the two IMO observers Theo Jacobs and Peter Ainswoth and Mrs. Calavera** has considered the criterion of Article 6(1)(a) met without taking into account especially the average mark. It is not known what other data they took into account when this candidate, apart from the minimum average mark, did not have scientific titles in the field of law, special experience in certain fields of law, or study and professional experience abroad.

Fourthly, Ardian Hajdari does not meet the condition of very good command of the English language, according to the provisions of **Article 6(1)(gj) of Law no. 84/2016**. There is no document in his file to prove the fulfilment of this condition as well as the fact **whether its fulfilment has been verified by the IMO and in what way. This is a fact that could be verified and can be very easily verified by the IMO.**

b- Election of the SAC judge Ms. Rezarta Schuetz

The election of the judge of the SAC **Rezarta Schuetz** is *illegal because the criterion of professional experience not less than 15 years has been violated* according to the provisions of **Article C(5) of the Annex to the Constitution and Article 6(1)(b) of Law no. 84/2016**.

³¹ According to the CV.

³² Please find attached a copy of the diploma published in “lex ferenda”.

³³ Please find attached a copy of the transcript.

Specifically, she did not have 15 years of experience in the functions and professions provided by the Constitution and the Law as judges, prosecutors, law professors, advocates, notaries, senior employees in public administration, or other professions related to the justice sector.

According to the CV, she had the following work experience:

- 03/1993 to 08/1996 legal consultant in the Agriculture Ministry.
- 12/1997 to 08/1998 legal consultant of the European Union mission in assistance of Customs.
- 08/1998 until 10/2000 legal consultant in the Chamber of American Lawyers.

The works performed by this candidate in Albania until 2000 do not fall into the categories of those required by Article C(5) of the Annex to the Constitution and Article 6(1)(b) of Law no. 84/2016, as 15 years of experience.

From 2000 until the moment of application she worked outside the territory of the Republic of Albania, in Kosovo and in the Republic of Northern Macedonia. Specifically:

- 10/2000 to 10/2008 as Legal Officer,³⁴ Department of Justice, UNMIK, Kosovo.
- 05/2010 until the moment of application as **official, employee**, at the OSCE Office, Skopje.

The above alleged experience of the candidate for seniority experience outside the territory of Albania *is not provided for in any of the requirements of the Constitution and the Law.*

Even in the file submitted for application³⁵ there are no documents to prove the fact of seniority of experience. There are some documents issued by foreign institutions outside the territory of the Republic of Albania, but these documents have no legal value before the institutions of the Albanian state as they are *not presented in the form required by law. They are documents without an apostille stamp of the place where they were issued, untranslated and notarised by the public notary as required by Albanian law*, therefore they do not have probative value for the facts claimed by the applicant. Consequently, in the conditions when a written act is held and issued in the territory of another state as well as in a foreign language, the formal elements for its validity in Albania must be respected according to the provisions of the Hague Convention dated 5 October 1961, as well as the provisions of Article 266 of the Code of Civil Procedure, which requires that *“When the document is in a foreign language, it is presented together with its translation into Albanian, legalized by the relevant embassy or consulate or by another competent body.”*

³⁴ A term which does not relate to any of the provided functions in Article C(5) of the Annex to the Constitution.

³⁵ Attestation of the Ombudsman no. 110/1 dated 20.03.2017.

This position has been held by the SAC judge **Rezarta Schuetz** herself in several decisions,³⁶ as a member of the judicial panels in cases where Judges and Prosecutors in the re-evaluation process have presented documents issued by institutions outside the territory of the Republic of Albania. She has stated that *they do not have any probative value for the facts claimed by the subjects as they have not been presented in the manner required by Albanian Law.*

While this SAC judge has presented before the Institutions of the Albanian state, to the President and the Ombudsman the documents issued by the institutions of other countries or in foreign languages to prove the seniority at work. *As these documents have no value, as she herself thinks and has decided, Rezarta Schuetz does not meet the constitutional and legal criteria of 15 years of service, and thus her appointment is illegal.*

For the above reasons, the current judge of the SAC, Rezarta Schuetz, has been disqualified by the Ombudsman for not meeting the formal criteria. Specifically,³⁷ the document verifying the criteria sent to the Assembly states that “Has applied for the position of Judge of the Appeal Chamber, the following documents are missing...” and it lists a number of documents and in the last point states “...The submitted documentation does not prove the seniority criterion of experience according to letter “b”, point 1 of Article 6 of Law no. 84/2016”.

This assessment was also supported by the IMO and together with the Ombudsman, they sent it to the Assembly on the list of candidates who do not meet the criteria to be elected. *But the Assembly, without conducting any investigation into the legal validity and provability of the documents submitted by the applicant, with a clear political position and without any new information or evidence as well as a legal arguments, with a qualified majority, has removed it from the list “B” (Disqualified), to list “A”(Eligible, ready to vote).*

c- Election of the SAC judge Natasha Mulaj

The election of the SAC judge **Natasha Mulaj** is also illegal because the criterion of work experience of not less than 15 years, the criterion of completion of the second level of university law studies with an average mark of not less than 8 and the criterion of very good command of the English language according to the provisions of **Article C(5) of the Annex to the Constitution Article 6(1)(a), (b), (gj) and (2)(d) of Law no. 84/2106** are not fulfilled.

Specifically, she did not have 15 years of experience in the functions and professions provided by Article C(5) of the Annex to the Constitution as judges, prosecutors, law professors, advocates,

³⁶ SAC decision no. 32 dated 21.11.2019 paragraphs 42, 55, 69 and 72.1; SAC decision no. 6 dated 28.02.2019 paragraph 20.13 ff.

³⁷ Page 123 of the file “Notes on the candidates who do not meet the formal criteria”.

notaries, senior employees in public administration, or other professions related to the justice sector.

Referring to her CV³⁸ as well as the relevant minutes of her questioning in the Assembly, it turns out that Mrs. Natasha Mulaj, has exercised the following duties:

- 1993-2000 as assistant judge in the District Court of Tropoja. Referring to her work booklet, from 08.05.1993-27.05.2000, thus 7 years and 19 days.
- 2000-2007 she alleges to have worked as a judge in the same court. Actually, it results that **she has exercised the function of a judge for a period of 2 years and 1 month**³⁹ because it has moved abroad for personal family reasons.⁴⁰
- 16.11.2007-09.04.2013 she has worked as legal assistant in the High Court. So, for 5 years and 4 months and 23 days.

It should be noted that Ms. Natasha Mulaj completed her studies in the cycle without separation from work (correspondence) in the period 1992-1996. So, before 1996 **she was not a lawyer and consequently cannot claim seniority work with this status. The work as an assistant judge does not fall into the categories of those required by Article C(5) of the Annex to the Constitution and Article 6(1)(b) of Law no. 84/2016, as 15 years of experience.** But even if they would be considered as experience, counting from 1996 when she graduated, **it cannot be more than 4 years.**

For the period 2000-2007 Mrs. Natasha Mulaj has worked as a judge for only 2 (two) years and 4 (four) months, a fact that is proven by the **request and file submitted by her for the position of Inspector** at the High Council of Justice.⁴¹ Precisely due to the lack of experience of five years as a judge, **Mrs. Natasha Mulaj was disqualified from the competition to be appointed as an inspector at the Inspectorate of the High Council of Justice in 2015**, a fact that is confirmed by the relevant minutes dated 03.02.2016 of the commission set up for reviewing candidacies for this purpose. It is also proved by **the note that the candidate has made with her writing in the submitted form** where she states that from 2002-onwards she has not exercised the function of Judge. Specifically, the candidate made the note *“...for the period 2002-2007 I was not paid as a judge because for my objective reasons I was on leave (4 and a half years) from the High Council of Justice, but my status as a judge was a passive status. Even today, as I write, my status is still*

³⁸ Submitted to the Ombudsman.

³⁹ Letter no. 590/1 dated 06.02.2020 of the High Judiciary Council sent to the applicant, “Response and Sending of documents”.

⁴⁰ Attestation of the Court District of Tropoja dated 28.05.2013 according to which, Mrs. Natasha Mulaj has been appointed judge in this Court in 24.07.2000 and has been paid with a monthly salary ALL 45084 up to 16.08.2002, sent to the High Judiciary Council with letter no. 590/1 dated 06.02.2020.

⁴¹ According to the minutes of 03.06.2016 of the meeting of the Commission for the review of candidacies for appointment of Inspector, where this request was reviewed. Sent by the High Judiciary Council with letter no. 590/1 dated 06.02.2020.

that of a judge. In 2000-2002 I was paid regularly after I tried every day criminal and civil cases at the Tropoja Judicial District Court. The requests to the High Council of Justice have been made every meeting but it was not possible to be reinstated judge once again. Then I started in the High Court...". So, the candidate with her hand has admitted and explained that only in the period 2000 (24.07.2000 where she was appointed) until 2002 (16.08.2002 when her financial relations were terminated) **she worked as a judge.**

In conclusion, regarding the professional experience, Mrs. Mulaj has a period of **2 (two) years and 1 (one) month** as a Judge in the District Court of Tropoja and **5 (five) years and 5 (five) months** as a legal assistant of the High Court. Consequently, she has work experience, according to this point, **only 7 (seven) years and 6 (six) months.**

However, even if her experience of assistant judge in the Tropoja Court of First Instance would be included in the calculation, **the candidate still would not meet the requirement of 15 years of work experience as a judge**, as she has only *11 (eleven) years and 6 (six) months* in total. Even if we would also add the period before 1996, when **she was not even a lawyer**, she still does not meet the seniority of 15 years.

It is worth mentioning that, on 17.02.2017, the Ombudsman, after making the verifications of the eligibility conditions, forwarded to the IMO the lists of candidates, of which resulted that **only 29 (twenty nine) applicants out of 163 in total met the legal conditions and criteria to be settled in the revaluation institutions.**

Later, on 03.03.2017, the Ombudsman forwarded to the Assembly the two above-mentioned lists, together with the recommendations of the IMO. *The name of Mrs. Natasha Mulaj was included in the list of candidates who do not meet the formal conditions and criteria.*

On 17.03.2017, the Secretary General of the Assembly of the Republic of Albania has once again returned the case to the Ombudsman according to Decision no. 18/2017 of the Assembly of the Republic of Albania. After that, on 30.03.2017, the Ombudsman forwarded to the Assembly two lists, one with 84 (eighty-four) candidates who meet the conditions and criteria, and the other with 109 candidates who do not meet them. *Name of Mrs. Natasha Mulaj, despite the fact that it is not clear what other actions were taken, was already included in the list of candidates who meet the formal conditions and criteria.*

There is no explanation as to why a candidate who did not meet the conditions for the first time, including Natasha Mulaj, met these conditions a month later.

Also, the current judge of SAC Natasha Mulaj does not meet the condition of completion of the second level of university law studies with an average mark of not less than 8, according to the

provisions of Article 6(1)(a) and (2)(d). It turns out that she graduated from the Faculty of Law in Tirana in 1996 in the system without disconnection from work. *In the documents submitted by her during the application for SAC judge, there is no information on what average mark she completed her studies.*

It is inexplicable how the **Ombudsman together with the two IMO observers Theo Jacobs and Peter Ainswoth and Mrs. Calavera** has considered the criterion of Article 6(1)(a) Law no. 84/2016 met without taking into account especially the average mark. It is unclear what information they took into account when the average mark is not known and there were no scientific titles in the field of law, special experience in certain fields of law, or study and professional experience abroad.

Also Mrs. Natasha Mulaj has completed her studies in law by correspondence, in the system without disconnection from work, without information about the average, with work experience not only insufficient according to constitutional and legal requirements but also in such functions that do not show and guarantee a lawyer with skills high professional and high ethical appreciation and moral integrity.

In this way, not only Article 6(1)(c) and (2)(c) of Law no. 84/2016 has been violated but also the basic constitutional principle of the vetting process provided for in Article 179/b of the Constitution has been breached, according to which *“In order to re-establish the proper function of rule of law and true independence of the judicial system, as well as the public trust and confidence in these institutions a re-evaluation system is established.”*. Thus, the public trust on judges and prosecutors cannot be restored when the latter will be evaluated by an individual *who not only does not meet the formal criteria of seniority but also does not enjoy the status of a lawyer to guarantee high professional and ethical skills and high moral integrity.*

Finally, Mrs. Natasha Mulaj does not meet the condition of very good command of the English language, according to the provisions of Article 6(1)(gj) of Law no. 84/2016. In her file there is no document to prove the fulfilment of this condition and whether its fulfilment has been verified by the IMO and in what way. *This is a fact that could be verified and can be verified quite easily by the IMO.*

All the above facts such as *experience, finishing university and foreign language* could be easily verified by the **IMO, which had the legal obligation and did not perform these actions.**

d- Election of the SAC judge Albana Shtylla

The election of SAC member Albana Shtylla is illegal because the criterion of not holding political functions has been violated according to the provisions of Article C(5) of the Annex to the

Constitution and Article 6(1)(ç) of Law no. 84/2016. Specifically, this applicant in the function of the Secretary General of the Assembly of Albania in the years 2014-2017, on behalf of the Assembly has exercised a political function by maintaining communications with the European Union, USA, Ombudsman and IMO regarding the Vetting process in Albania⁴² and the election of members of the Re-evaluation Institutions, including the SAC where she herself was elected. Article 6(1)(f) of Law no. 84/2016 was infringed as it has not substantially met the condition of not being the main participant in the Justice Reform process. Proposed by the Assembly, which consists of representatives of Political Parties makes it essentially a proposal by them.⁴³

The current SAC member Albana Shtylla, **as the political representative of the Assembly, the former Minister of Foreign Affairs Ditmir Bushati, the former Minister of Integration of Albania Klajda Gjoshaj and the General Secretary of the Council of Ministers Engjëll Agaçi are notified by the Director of the Directorate of General Neighbourhood and Enlargement of the European Union Christian Danielson**, with the letter dated 26.01.2017 regarding the acceptance by the European Union and the United States of America⁴⁴ of the request of the Albanian Government for the establishment of the IMO in order to monitor the implementation of Vetting process in Albania. **Also, political authorities in Albania, including Mrs. Albana Shtylla**, are also informed about reaching a political agreement between the EU and the US for the joint monitoring of the vetting process in Albania and that this mission would be led by Mr. Genoveva Ruiz Calavera, Director for the Western Balkans in the European Union.

So, it is clear that the political institutions of Albania, the Council of Ministers, represented by Mr. Engjëll Agaçi, Ministry of Foreign Affairs represented by Mr. Ditmir Bushati, Ministry of Integration represented by Mrs. Klajda Gjoshaj and **the Assembly of Albania represented by Mrs. Albana Shtylla**, have submitted a request to the European Union to monitor the implementation of the vetting process and the European Union after receiving the request on 26.01.2017 informs about this fact these political authorities, including the Secretary General of the Albanian Parliament **Albana Shtylla**.

The communication of the senior political official of the European Union with the highest political officials of Albania **is only a political communication. The applicant Albana Shtylla, in the function of the Secretary General of the Assembly of Albania, has participated directly in this political activity.**

⁴² Letter of date 26.01.2017 that Director of the General Directorate for Neighborhood and Enlargement Christian Danielson sends to the Albanian authorities. Fqim

⁴³ Article 6(1)(f) of Law no. 84/2016 "Has not been... expert appointed by the political parties..."

⁴⁴ Agreement between the US Department of State and the European Union "On cooperation in the International Monitoring Operation in the process of transitional re-evaluation of judges and prosecutors in Albania" signed on 02.09.2016 by the US and on 1.11.2016 by the EU.

The same thing is done by Ms. Genoveva Ruiz Calavera⁴⁵ **in her political function in the European Union as Director for the Western Balkans**, now as head of the IMO, when on 07.02.2017 she informed the EU Director General of the European Union for Neighbourhood and Enlargement and at the same time the **main political authorities in Albania, the Minister of Foreign Affairs, the Minister of Integration and the Assembly of Albania, represented by Mrs. Albana Shtylla, that the EU and US mission** to monitor the vetting process in Albania was ready. It also informs about the participants in this process from EU countries and from the USA as well as other important details.

In the last paragraph Ms. Calavera informs the main political authorities in the EU and Albania that the experts of this mission are ready to contribute to the final evaluation of the candidacies to be appointed to the Vetting Institutions.

So Mrs. Calavera informed Ms. Shtylla that the former would be the one that would make her final verification when applying to become part of the Special Appeal Chamber pursuant to Article 7(5)-(7) of Law no. 84/2016. In this way, the Head of the IMO has decided, from this moment, in a clear conflict of interest the activity of this institution in Albania regarding the verification of the criteria of the applicant Albana Shtylla.

Also, in the political function of the representative of the Assembly Albana Shtylla has communicated⁴⁶ with the Ombudsman and the IMO in the months of February to April 2017 during the procedures of verification of the criteria of applicants for members of re-evaluation institutions. Despite the fact that she had applied for the SAC, she continued the communications in order to verify whether she herself met the criteria or not. Pure action in conflict of interest, the exercise of a public duty to resolve an issue when she herself had a direct interest in the final outcome. Meanwhile, in its communications⁴⁷ for this process and in the same period, the Ombudsman addresses the Speaker of the Assembly, Mr. Ilir Meta.

Also Mrs. Shtylla was a member of the Central Election Commission as a representative of the Socialist Party.⁴⁸ In 2013, following the order of the Socialist Party, she resigned along with two other representatives of the Socialist Party. So, she has been in office and has maintained a clear political stance.

⁴⁵ Letter of Mrs. Genoveva Ruiz Calavera dated 26.01.2017 for the Director of General Directorate of the European Union for Neighbourhood and Enlargement and the Political Authorities in Albania.

⁴⁶ Letters of the Assembly no. 811/5 dated 07.03.2017, no. 811/6 dated 10.03.2017, no. 811/9 dated 15.03.2017. no. 938 dated 17.03.2017 sent to the Ombudsman.

⁴⁷ Letter of the Ombudsman no. 57 dated 03.03.2017 and no. 104 dated 07.04.2017 sent to the Assembly.

⁴⁸ <http://ëëë.respublica.al/content/albana-shtylla-dhe-denar-biba-dy-emrat-e-ps-p%C3%ABr-n%C3%AB-kqz>, accessed on 14.07.2020.

So an individual who has maintained clear political functions and stances, being fully politically active not only in the process of initiating and establishing vetting institutions in Albania but also in evaluating concrete candidacies, where she herself has been in clear opposition to Article 6(1)(ç) of Law no. 84/2016 is elected a member of the highest Vetting institution.

This candidate was elected in violation of the condition provided by Article 6(1)(f) of Law no. 84/2016. **She has not been a member of the High Level Expert Group but the head of the Technical Secretariat for Justice Reform.** But what has basically been the function of the High Level Experts Group and of the Technical Secretariat? **Both of these structures have worked together, as a body.**⁴⁹ Even if the High Level Experts were nominated by justice institutions such as the High Court, the General Prosecutor, the School of Magistrates, etc., **the Head of the Technical Secretariat was nominated by a purely political body, such as the Parliamentary Commission for Justice Reform composed of representatives of political parties and led by the Socialist Party deputy Fatmir Xhafaj, i.e. basically elected by political parties.**

It was the **experts and members of the technical secretariat**, the people who materialized the reform through draft laws or draft constitutional amendments that they prepared. There is no explanation why Law 84/2016 **excludes the Experts and Not the members of the technical secretariat and even more so the Head** from the election in the future bodies of the new justice.

In fact, there is a simple explanation in that the **head of the Technical Secretariat for Justice Reform would later run for judge of the Special Appeal Chamber.** So, this candidate has been one of the **main actors in the preparation of the Amendments to the Constitution and the Law** that provided for the institution and the manner of its construction, **where she had planned to work in the future.** Thus, basically **the conflict of interest**, from where the legislator started to impose this restriction, **is the same for the current candidate and judge of SAC Albana Shtylla as well as for the High Level Experts.**

Regarding Mrs. Albana Shtylla there have been suspicions, reflected by the media,⁵⁰ that in her **doctoral dissertation there were copies, plagiarism.** The suspicion about this fact constitutes a serious violation of the moral figure of a Member of the Constitutional Court of the Republic of Albania and if proven, also the criminal offense of theft.

e- Election of the SAC judge Sokol Çomo

⁴⁹ On the same day, for the same reason and the same roles were created: Decision no. 7, dated 23.01.2015, “On the approval of the Group of High Level Experts at the Special Parliamentary Commission”, decision no. 8, dated 23.01.2015 “On the approval of the organizational chart of the Technical Secretariat” and decision no. 12, dated 2.04.2015, “On the establishment and management of working groups with high level experts”.

⁵⁰ <https://ëëë.cna.al/2019/01/27/plagjiaturat-lista-e-plote-me-emrat-e-doktoranteve-kopjues/>, accessed on 14.07.2020.

The election of the judge of the Special Appeal Chamber Sokol Çomo is illegal as it has violated of Article C(5) of the Annex to the Constitution and Article 6(1)(ç) and (f) of Law no. 84/2016 because he has exercised political functions and did not meet the condition of not being the main participant in the Justice Reform process. Proposed by the Assembly, which consists of representatives of Political Parties, he was politically proposed.

In essence, both the candidates Albana Shtylla and Sokol Çomo were elected in violation of the condition provided by Article 6(1)(f) of Law no. 84/2016. The latter has not been part of the High Level Expert Group but has been an external consultant to this Group. The Assembly with Decision no. 12, dated 02.04.2015⁵¹ “On the approval of experts as external consultants to the Special Parliamentary Commission”⁵² has approved as external consultants to the Group of High Level Experts 7 (seven) experts identified by name including the applicant Sokol Çomo. In essence, despite complications and the name given to it by the Assembly, the role of this candidate in the Reform has been the same as that of the Senior Experts. Even more, while the Experts are nominated by the Justice Institutions, in the contrary, the applicant Sokol Çomo is nominated by the Socialist Party deputy Fatmir Xhafa and approved by the Special Parliamentary Commission for Justice Reform with a majority of Socialist Party MPs, so he is considered as appointed by the Political Parties.

Again, the question arises why Law no. 84/2016 excludes High Level Experts and not High Level Experts External Consultants in the election of future bodies of the new judiciary?

Even in this case the answer is simple because the External Consultant of High Level Experts on Justice Reform himself, Sokol Çomo, would later run for a member of the Special Appeal Chamber. So, this application being also one of the main actors in the preparation of the Amendments to the Constitution and the Law that has provided the institution and the way of its construction, where he had planned to work in the future. So essentially, the conflict of interest, from where the legislator started to impose this restriction, is the same for the candidate and the current member of SAC Sokol Çomo as well as for the High Level Experts.

Analysing Article 6(1)(f) of Law no. 84/2016, it can be concluded that it excludes from the candidacy two categories of functions: High Level Experts at the Parliamentary Commission for Justice Reform and those Experts of any category to be appointed by political parties.

Applicants Albana Shtylla and Sokol Çomo are excluded according to the two criteria:

⁵¹ Decision of the Judicial Reform Commission chaired by Mr. Fatmir Xhafaj, the same who was Former Minister of Justice and received the applicant Sokol Çomo and Deputy Minister of Justice during 1998-2000.

⁵² A decision inaccessible for the public.

- Essentially their function was the same as that of the High Level Experts,
- Both as experts of any category have been proposed by political parties directly and in the context of the nomination process.

Also, **the full conviction that the applicant Sokol Çomo is an individual who represents the political interest of the Socialist Party is withheld by the fact that he held a purely political function, Deputy Minister of Justice during the rule of this political force in 1998-2000.** In this context, it is explained why the Constitution and Law no. 84/2016 exclude candidates who have held **political office for the last 10 years and not 15 or 20.** Of course, the candidate, as a consultant to the majority in the Justice Reform, in setting this deadline **has considered himself.**

Mr. Sokol Como and Ms. Albana Shtylla were also elected members of the High Council of Justice by Parliament on the proposal of the Socialist Party. So, they have exercised a politically proposed function. Mr. Çomo was nominated by the Parliament with a majority of the Socialist Party, both times when he was elected a member of the High Council of Justice, 2002-2007 and 2013-2016.

The Constitutional Court of the Republic of Albania in its decision no. 14 dated 22.05.2006 examining the issue regarding the fact **whether the members of the High Council of Justice elected by the Assembly should not be judges** found that such a legal provision did not contradict the Constitution. Specifically, the Constitutional Court concluded that:

“The concept of self-government of the judiciary finds its expression not only in the context of the separation of powers, but also in their interaction. Therefore, it can hardly be accepted that there is a violation of the principle of separation and balance of powers when one power creates bodies of another power or provides revenues for the budget of another power. **Given the need for cooperation between the powers, the self-government of the judiciary cannot be realized** as required without respecting the principle of democracy, i.e. **without listening and appreciating the will of the sovereign that appears** not only when it approves laws of organization and functioning of organs the judiciary, but also when approving the appointment of members of the High Court and its President **as well as when directly electing three members of the High Council of Justice.**

Contrary to the allegations of the applicant, the Constitutional Court **does not find elements incompatible** with the Constitution in the content of Article 1 of the law under review, which has made additions to point 2 of Article 4 of the previous law and has determined that **members of the High Council of Justice elected by the Assembly should not be judges.** Such a definition is in line, on the one hand, with the principle of balance of powers that requires control and interaction between them and with the formula of Article 147 of the Constitution, on the other hand, **according to which the High Council of Justice will not only the judiciary is represented with ten members, but also the legislative power with three members. The latter bring to the**

High Council of Justice the spirit of the legislature and, as such, should not be replaced by judges.”

According to the above interpretation, Mr. Sokol Como and Mrs. Albana Shtylla, who were elected members of the High Council of Justice by the Parliament on the proposal of the Socialist Party, have conveyed in this institution the political spirit of the Assembly and the Socialist Party. So, they have exercised a political function.

f- Election of the Public Commissioner Dariel Sina

The election of PC Dariel Sina is illegal because the criterion of work experience of not less than 10 years has been violated according to the provisions of Article 6(3) of Law no. 84/2016.

Specifically, he did not have 10 years of experience in the functions provided by Article 6(1)(b) of Law no. 84/2016 as judge, prosecutor, law professor, advocate, notary, senior employee in public administration, or other professions related to the justice sector.

Concretely, according to the CV submitted to the Ombudsman Dariel Sina, he has the following work experiences:

- January 2001-August 2003, assistant lawyer in a law firm in Greece.
- November 2003-August 2005, assistant lawyer in a law firm in Greece.
- December 2005-August 2009, assistant lawyer in a law firm in Greece.

The work experience performed by this candidate in Greece until August 2009, i.e. assistant lawyer, does not fit any of the categories of those required by Article 6(3) of Law no. 84/2016 as 10 years of experience. Consequently, during this period he has 0 years of work experience.

From October 2009 to December 2016⁵³ he worked in Albania as a professor of law. *Thus, this candidate has 7 years and 3 months of work experience for the effect of candidacy as a Public Commissioner.*

In the file submitted for application are three documents issued by private persons in Greece, which unilaterally declare that they are lawyers, alleging to prove the fact that Dariel Sina worked as an assistant lawyer or intern for the period 2001 to 2009. *None of these Lawyers, even privately, declare that Dariel Sina has been employed and insured under the law in Greece. Thus, the applicant during the 9 years may have stayed in these offices, may have opened and closed the*

⁵³ On 09.01.2017 he submitted the request and the respective documents to the Ombudsman for the application for member of the re-evaluation institutions.

door or done any other service, but there is no document to prove the fact that he was paid and has been insured at least for the job as an assistant lawyer.

Furthermore, these three statements have no legal value before the institutions of the Albanian state as they have not been submitted in the form required by law. These documents do not have the apostille stamp of Greece, the country where they were issued, translated into Albanian and notarised as required by Albanian law. In the conditions when a written act is held and issued in the territory of another state as well as in a foreign language, the formal elements for its validity in Albania according to the provisions of the Hague Convention as well as the provisions of Article 266 of the Code of Civil Procedure must be respected. The latter requires that *“When the document is in a foreign language, it is presented together with its translation into Albanian, legalized by the relevant embassy or consulate or other competent body.”*

Even more, pursuant to the Hague Convention of 5 October 1961 these three declarations cannot be provided with the Greek apostille stamp being private documents, which simply express the will or desire of individuals. The President, the Ombudsman, the IMO and the Assembly have not investigated their legal validity and provability but have taken them for granted.

This position has been taken by **PC Dariel Sina himself in numerous appeals of the IQC decisions and stances before the SAC**, in cases where Judges and Prosecutors in the re-evaluation process have submitted documents issued by Official Institutions, let alone individuals, outside the territory of the Republic of Albania *stating that they have no probative value for the facts claimed by the subjects as they have not been presented in the manner required by Albanian Law.*⁵⁴

Because these documents have no value, as he himself thinks and has expressed in appeals and stances before the SAC, this applicant does not meet the legal criterion of 10 years of service, so his appointment is in open violation of the law.

If we take for granted the statement in the CV, according to which he worked for 9 years and was paid by lawyers without paying fiscal obligations to the state in Greece, it could be concluded that in this way Dariel Sina in cooperation with the lawyers has violated tax legislation, **committing tax evasion and thus not only questioned his ethical and moral integrity but at the same time committed the criminal offense of “Non-payment of taxes and duties”, committed in Greece, in collaboration, provided by Articles 181 and 25 of our Criminal Code.**

Also, for this fact, the IMO experts did not perform any verification although some of these verifications could be easily performed by the online office. For example, whether the tax

⁵⁴ Appeal of the PC Dariel Sina against the decision no. 58 dated 01.08.2018 of the IQC for the subject of re-evaluation Besnik Muçi, page 10; Appeal against the decision no. 42 dated 18.07.2018.

entities alleged by the applicant have registered him as an employee, when was he registered, whether he has paid obligations, etc. Greece is a country of the European Union and the IMO, as an institution also of the European Union, would find it very easy to carry out this verification. The minimum that could be easily verified was whether Dariel Sina was equipped with a work number and social security number in Greece.

If not, it would turn out that the applicant used three Greek citizens to deceive the Albanian state and the IMO, the Ombudsman and the Assembly legitimized this deception.

As a conclusion, the institutions of the Albanian state, the Ombudsman and the IMO in clear contradiction with the provisions of Article C(5) of the Annex to the Constitution and the provisions of Articles 6-8 of Law no. 84/2016 *have sent to Assembly as candidates who meet the formal requirements for SAC judges applicants Ardian Hajdari, Natasha Mulaj and Albana Shtylla as well as the applicant Dariel Sina for Public Commissioner.*

The Assembly, in violation of the Constitution and the Law, moved the applicant Rezarta Schuetz from the list of candidates who do not meet the criteria to the list that meets the criteria and voted the applicants Ardian Hajdari, Natasha Mulaj and Albana Shtylla for members of the SAC and the applicant Dariel Sina for Public Commissioner.

IV

The stances of the IMO and the SAC regarding the situation of illegality

The IMO and the SAC have not responded to my requests for initiating disciplinary proceedings and dismissal of members of re-evaluation institutions **Ardian Hajdari, Rezarta Schuetz, Natasha Mulaj, Albana Shtylla, Sokol Çomo and Dariel Sina**, as they did not meet the constitutional and legal criteria at the time of election.

Furthermore, the fact that the process of transitional re-evaluation of judges and prosecutors in the Republic of Albania is in a situation of illegality is proven by the answers that the IMO and the SAC returned to Mrs. Antoneta Sevdari, former Member of the High Prosecutorial Council, regarding her request to start the disciplinary process for the dismissal of some members of the SAC because they did not meet the constitutional and legal criteria at the time of election.

Specifically, the SAC with its letter no. 672/11 dated 04.12.2019 with object “*Response to Mrs. Antoneta Sevdari*” has not denied the existence of ineligibility conditions for SAC members but informs that there are no disciplinary proceedings registered or initiated in the SAC. Further, it states that since the claims belong to the period before the appointment and the beginning of the function, the rules provided by Articles 16 and 17 of Law no. 84/2016 “*On the transitional re-evaluation of judges and prosecutors in the Republic of Albania*” do not apply.

The same answer was given by the IMO to Ms. Sevdari. It did not deny the fact that the judges of the SAC were in conditions of ineligibility, but Her requests are considered outside the conditions of application of Articles 16 and 17 of Law no. 84/2016.

In this way both these institutions accept the fact that at least Mr. Ardian Hajdari and Mr. Luan Daci have been in conditions of ineligibility as a judge of the SAC, but since these facts belong to the period before their appointment, the provisions of Law no. 84/2016 for disciplinary process do not apply.

So, the SAC and IMO deliberately acknowledge that the SAC is and continues to operate in conditions of illegality as at least two of its members, Mr. Ardian Hajdari and Mr. Luan Daci are appointed in violation of the Constitution and the Law.

V

The same stances were of the Assembly of the Republic of Albania

The Assembly of Albania on 20.02.2014 has dismissed Mrs. Zana Xhuka, Inspector of the High Inspectorate of Declaration and Audit of Assets and Conflicts of Interests, annulling the Decision no. 1 dated 21.01.2013 with another decision with the argument that at the time of appointment, she did not meet any aspect of the criteria of graduation, experience in the profession and merit in the election at the helm of HIDAACI.

Firstly, the Assembly set up a Commission to investigate the above facts, which in the end submitted a report to the Assembly. In this report, after finding that the decision to appoint the Chief Inspector was an administrative activity of the Assembly, it was *proposed that the Inspector be dismissed arguing that "... does not meet the criteria of graduation, experience in the profession and merit in the selection in this position..."*.

We are in the *same factual and legal situation*. The Assembly with the administrative decision no. 82/2017 has elected five members of the Constitutional Court, the Special Appeal Chamber, applicants Ardian Hajdari, Rezarta Shuetz, Natasha Mulaj, Albana Shtylla and Sokol Çomo as well as a Public Commissioner applicant Dariel Sina who did not meet the constitutional and legal criteria for appointment.

VI

Active legitimacy in filing the claim

Given that the Decision of the Assembly no. 82 of 2017 is an act issued in the framework of the administrative activity of the Assembly of Albania, its objection can and should be made according to the means provided by the Code of Administrative Procedures of the Republic of Albania.

Specifically, Article 2(1), the part related to the scope of application of the Code of Administrative Procedures, provides that *“this Code applies when the public body, in exercising public administrative functions, regulated by administrative law: a) decides on the rights, obligations and the legitimate interests of persons, as well as any other case where the law expressly provides for the issuance of an administrative act.”* In this case, **the Assembly has not exercised its legislative function but during the exercise of the administrative function has taken a decision appointing the members of the SAC.**

Article 3(6) gives the definition of a public body providing that *““Public body” is any body of central government, which performs administrative functions, any body of public entities, to the extent that they perform an administrative function”*. **In this case the Assembly is a public body, as a body of central government, which has performed an administrative function and not a legislative one.**

Regarding the determination of a person who may be a party to an administrative procedure, Article 3(7)(a) and (b) provide that *““Party” is: a) any natural or legal person who has a right or interest legitimate direct in an administrative procedure, as defined in Article 33, point 1, of this Code; or b) a party who does not have a legitimate direct right or interest in an administrative proceeding as defined in Article 33, paragraphs 2 and 3, of this Code, but whose rights or legitimate interests may be affected by the outcome in procedure”*. My legitimate interests, as a Former Member of the Constitutional Court, for a fair trial have been directly affected by the outcome of this illegal administrative procedure as I have been tried by a Court elected in violation of the law.

Article 107 of the Code provides when the administrative act is lawful. Specifically, *“The administrative act is legal if it is issued by the competent public body, in accordance with the principles and legal requirements provided in this Code, as well as the legislation in force.”* The administrative act of the Assembly for the appointment of the SAC judges is not legal as it is not in accordance with the requirements of the Constitution and Law no. 84/2016.

Article 114, first paragraph, provides that *“Except in the cases provided for in Article 108 of this Code, an illegal administrative act may be annulled or repealed, with the aim of restoring legality.”* **Thus, the Assembly itself and the other two bodies that have issued the act, can annul the act issued in violation of the law.**

Article 117 provides the procedure for annulment of the administrative act. Specifically, *“In any other case, other than that provided in paragraph 1 of this article, the annulment or repeal may be made within 30 days from the day when the public body is acquainted with the facts leading in cancellation or abrogation, but not later than 5 years from the notification of the administrative act.”*

The Assembly with Decision no. 82/2017 “On the approval of the list en bloc of the candidates appointed in the Re-evaluation Institutions, according to Law no. 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania” pursuant to Article C(12) of the Annex to the Constitution, Articles 10(10) and 11(1) of Law no. 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”, of Article 17(2) and (8) of the decision of the Assembly no. 40/2017 “On parliamentary procedures for the functioning of ad hoc committees and the implementation of the voting process, according to law no. 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”, based on the final list of appointed commissioners, judges and public commissioners, compiled by the Secretary General of the Assembly, according to the reports of ad hoc selection commissions, decided to approve the list en bloc of the candidates appointed in the re-evaluation institutions, according to law no. 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”.

This decision is illegal for the part that belongs to the appointment of five judges of the SAC and one PC as I have analysed supra. For these reasons, the President, the Ombudsman, the International Monitoring Operation and the Assembly must take constitutional and legal steps to annul decision no. 82 of 2017.

Honourable representatives of the most important Institutions of the Republic of Albania,

Concluding the above, because it results that the process of re-evaluation of judges and prosecutors in the Republic of Albania since the beginning has been and continues to be in a situation of illegality because at least 6 (six) of the members of its institutions have been appointed unconstitutionally and illegally, I urge you to take the appropriate constitutional and legal steps to end this **illegality** which not only does not guarantee the functioning of the rule of law, the independence of the justice system and the restoration of public confidence in institutions of this system but has damaged and is irreparably damaging the rule of law and the judicial system in our country.

Honourable representatives of Foreign Embassies and Institutions,

I am informing you of this request and situation of illegality not only for the fact that you are the most important friends and partners of my people and that we seek to move towards the legal standards of your countries but also for the fact that through the International Monitoring Operation you are an essential part of this process that has produced this situation of illegality, **which I am fully convinced that none of You would want and allow in Your countries.**

Regarding the above, based on the Constitution of the Republic of Albania, Articles 179/b, B(1), B(2), B(3)(a), C(5)-(12) of the Annex, Law no. 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”, Articles 6-11 and the Code of Administrative Procedures of the Republic of Albania Articles 2(1), 3(6) and (7)(a) and (b), 107, 114 and 117,

REQUEST

- **The annulment of the decision of the Assembly of the Republic of Albania No. 82/2017 “On the approval of the list en bloc of the candidates appointed in the Re-evaluation Institutions according to Law no. 84/2016 “On the transitional re-evaluation of judges and prosecutors in the Republic of Albania”.**

**Respectfully,
The applicant
Besnik Muçi**