



Prot. No. 160/1

Tirana, 23/04/2024

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

Case Number **DC-P-TIR-1-27**

Assessee **Valentin PREÇI**

RECOMMENDATION TO FILE AN APPEAL

According to

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

1. Introduction

The assessee Valentin Preçi, serving as a prosecutor at the Tirana District Court, has undergone the re-evaluation process by the Independent Qualification Commission (hereinafter referred to as "IQC") in accordance with Article 179/b, par. 3 of the Constitution and the provisions of the Vetting Law.

The IQC conducted its investigation based on three criteria: assets, background, and proficiency. After reviewing reports from auxiliary bodies and considering evidence obtained through the investigation process and submitted by the assessee, the IQC's Adjudication Panel concluded the investigation. They then notified the assessee of their findings, shifted the burden of proof on certain issues, and requested explanations.

Hearing was held on 19.12.2023, and following deliberation as per Article 55, paragraph 5 of the Vetting Law, the Adjudication Panel, with a majority voted, decided to confirm the assessee in duty pursuant to Article 59 Vetting Law. The decision was announced publicly on 10 January 2024.

The undersigned International Observers (hereinafter the "IOs"), having reviewed the case file and the results of the public hearing, believe that the evidence presented during the investigation justifies a review of the case by the Appeal Chamber.

2. Grounds for recommendation

Several issues were not properly assessed by the IQC, which renders the decision unclear. It does not appear to be based on the available evidence. It deviates from the standards typically held by the IQC in its current practice, and from the principles and guidelines established by the Special Appeal Chamber (hereinafter "AC").

It is the IOs' opinion that the assessee failed to adequately address the burden of proof regarding certain crucial findings resulting from the investigation. Furthermore, it is noted that the assessee's attempts to rebut these findings were predominantly based on narratives lacking supporting evidence. Despite this, IQC accepted all his explanations and decided to confirm the assessee in duty with a majority vote.

Therefore, the IOs recommend that the Public Commissioners (hereinafter PCs) file an appeal against the IQC's decision no. 730 dated 10th of January 2024, which confirmed Valentin Preçi in duty.

The IOs believe that a proper assessment of the evidence presented in the case, along with correct application of the relevant legal framework, would provide grounds for the AC to modify the IQC's decision pursuant to article 66, para. 1.c of the Vetting Law.

Thus, the IOs request a judicial review of the entire case, particularly focusing on the following issues:

1. Assets assessment

It is our opinion that the assessee did not rebut certain investigative findings and the IQC did not provide clarity as to why, given the insufficient rebuttal, they reached a decision for a confirmation in office. The latter indicates a misinterpretation of the available evidence on crucial matters and insufficient reasoning of the decision.

a) *Financing of loan expenses by father-in-law *** ***

According to the responses provided in the standard questionnaire, the assessee claims that his father-in-law, *** **, covered loan instalments for the purchase of an apartment over several years. He states, "my father-in-law funded payment of instalments of the loan in 2008, amounting to EUR 2,800, EUR 3,200 in 2009, and EUR 2,750 in 2010. My father-in-law provided these funds to support our household financially and due to tradition." The assessee further clarifies that his parents-in-law did not provide any financial assistance for his wedding but covered the expenses related to the loan instalments during these years.

Here the Commission erred by drawing an analogy between travel expenses (recognized in the jurisprudence of the AC - the IQC makes a reference to Decision No. 2 from 02/02/2023, paragraph 19.6) and lending/donation relationship in the current case. Additionally, the Commission concluded with a wrong legal qualification that (i) as long as these payments (part of loan's instalments) have been declared in the questionnaires by the assessee, and (ii) based on the provided documentation, it cannot be concluded that they lacked financial capacity to make these payments.

Declaration of these payments comes as an obligation due to the Vetting Declaration introduced with the Annex to the Constitution and the Vetting Law, whereby assets and their sources must be fully declared and be legally justified; while travel expenses are part of the questionnaires and that is why their assessment is carried out during that phase of the investigation. Therefore, the rationale of the Commission is deemed legally flawed and not based on factual evidence.

Article 32.4 of the Vetting Law stipulates that once a lending/donation relationship is established, the lender/donor is classified as an "other related person" and must justify the legitimacy of the source used for the creation of an asset. However, in this case, there is no evidence establishing such a relationship, and there has been no proper financial analysis conducted regarding the lender/donor's ability to justify the payments.

The assessee has never previously declared the source of the loan instalments in any periodic declarations, as required by Article 32, para. 5 of Law no. 84/2016. Additionally, neither the assessee nor his related person declared such information in the vetting declaration of assets.

Consequently, due to the absence of documentary evidence related to this income and considering the jurisprudence of the AC¹, the income claimed only during the questionnaires, after the Commission's inquiries were made to the assessee, should not be considered lawful income in the financial analysis.

b) *Travel expenses (transport and stay in the USA)*

Regarding the stay of the related person (spouse) of the assessee for a period of 4 months, from ** July 2009, to ** November 2009, in the USA while she was pregnant with her daughter, we disagree with the calculation of daily expenses at only 5 USD per day.

Our disagreement is not solely based on the extended period she lodged in her cousin's house but primarily on the statements made by the assessee to HIDAACI on 9 March 2016.

The question asked by the inspector of HIDAACI was the following: '*How many times have you been abroad? How often it was for work and how often were for private trips? How much have been the expenses for private trips?*' . The assessee answered among other things that:....***For private purposes as far as I remember, I was in Italy once with my wife, I was in the USA about 10-11 times and since my wife lived and worked, the expenses were covered by my and my wife's income. I was once in Turkey with my wife on holiday, where expenses are covered by family income.***

The assessee, in his statements before HIDAACI, clearly outlined the source of funding for private trips abroad, including not only transportation but all travel expenses (transport and stay).

It is evident that in response to questionnaires during the administrative investigation by IQC, the assessee altered the declarations regarding the source of income for travel expenses abroad, as declared in the minutes of HIDAACI of 9 March 2016. The assessee now claims in the re-evaluation process that only transportation costs are included in his responses, which contradicts his earlier explanation before HIDAACI.

¹ See AC decision no. 7/2023, para 14.6

Furthermore, there was no investigation conducted into the medical expenses during pregnancy and delivery of the newborn child in the USA. It is widely known that childbirth expenses in the USA can be substantial, averaging around 10,000 USD, depending on whether it is a normal delivery or a C-section².

c) *On social assistance received in the USA*

The assessee, in his periodic annual declarations, vetting declaration, and replies to the Results of Investigation, claims different amounts of social assistance received by his spouse in the US. However, the documents provided only prove receipt of a small proportion of the claimed sums, as shown in the table below:

Year	PAD	Vetting	Claims after ROI	IQC as per documents
2009	-		1,692	846
2010	2,657		2,256	1,338
2011	2,400		1,696	296
2012	4,600		3,326	1,425
2013	2,850		4,869	2,828
2014	1,300		6,337	1,913
2015	-		-	-
2016	1,035		1,035	1,035
Total / sum in USD	14,842	18,691	21,211	9,681

The amount claimed as being benefited from by his spouse in the refunds does not appear to be accurately referenced in the data of the document detailing the income from social assistance.

² In Ohio, Vaginal birth with insurance costs \$6,138.46, while one without insurance costs \$10,629.46. A C-section costs \$9,100.74 with insurance and \$14,212.56 without insurance. <https://policyscout.com/health-insurance/learn/costs-childbirth-by-state>

The assessee did not submit any proof regarding the amounts claimed to have benefited from social assistance. No official documents, bank account statements, bank checks, or data were provided to substantiate and clarify the claimed amount and the timing of withdrawal of these amounts.

The total sum claimed in his reply to the Commission's report on investigation significantly exceeds the sums declared before in the periodic annual declarations (PAD) and in the vetting declaration. Additionally, it more than doubles the amount that the documents submitted to the IQC can prove. This inconsistency raises concerns about the accuracy and completeness of the individual's financial disclosures and warrants further scrutiny.

d) On the income from betting

The assessee claims to have benefited 7,451 Euros from betting on football matches in 2010. The Commission concluded that the assessee's explanations were plausible and decided to include 4,000 Euros as income after splitting part of the profit with his brother.

Without delving into the specifics of the story and the likelihood of the assessee placing only one bet in his life and winning all the tickets, we believe that the Commission's decision to recognize this income could pose challenges for the development of case law and the application of appropriate standards.

The only evidence provided is a letter from the betting company confirming that some tickets with a serial number collectively won this amount. Therefore, there is no evidence to support the assertion that it was actually the assessee who benefited from this amount. This stance aligns with the decision of the AC in the case of *** ***, where a similar conclusion was reached "given that the sports lottery tickets did not contain any generalities from which the winner could be identified, the assessee failed to prove the relevance and legality of such income." (Decision no. 8/2018 *** ***) .

2. Background assessment

During the investigation, the assessee declared his trips, mentioning that in June 2012, he crossed the border with Montenegro with *** ***, and in July, he crossed the border with Kosovo with *** ***. There is a high probability that at least one of these individuals was involved in organised crime. According to the assessee, both encounters were completely random, as he was traveling to Montenegro to bring painkillers to his friend in Ulcinj, while again by pure chance met also with *** *** for no apparent reason beside the desire to visit Prizren.

In relation to these chance meetings, it's important to note that there was no thorough analysis of the contacts and their history. Instead, the burden of proof was placed on the assessee only to clarify whether he should have declared such contacts or not.

In addition, the analysis under ethics appears to be flawed. IQC asked the assessee whether he should or should not have declared the contacts in the background declaration and without critical analysis easily concluded the absence of any problematics. It is a legal requirement that the assessee must flag potential inappropriate contacts, especially since one of the brothers, according to public information from news outlets³, was previously accused of exploitation of prostitution and money laundering. It is our view that the assessee failed to fulfil this obligation.

Last, but not least, the analysis of whether formalistically he failed to declare the contacts and whether this can be qualified under art. 61.3 of the Vetting Law is missing. What is also absent is any scrutiny in the assessment of the real nature of the contacts in question. IQC, basing itself on the explanations of the assessee alone prematurely concluded that these were casual contacts, without any in-depth evaluation.

IQC should have pursued a more critical approach and assess whether these individuals were accused as persons involved in organized crime and how much if at all this might detrimentally affect the position of the assessee as a magistrate. In case the analysis above would not have led to a conclusion for a negative evaluation under the background assessment, the IQC should have analysed possible ethical violations (this is also missing because the conclusion on ethics is seemingly based on the premature conclusions in the background section, i.e. *since this was a casual contact, and allegedly not an inappropriate contact under background, then there is also no ethical violation*). The ethical analysis requires a higher standard of scrutiny as it considers not only the assessee's behaviour but also how an external observer may perceive that behaviour. Given the notoriety of the *** family, an average observer would likely not agree that a magistrate should travel with such individuals.

3. Proficiency assessment

a) Ethics.

Following the rationale outlined in point 2 above, if these contacts were not deemed inappropriate under the background pillar, then a separate analysis should have been conducted for ethical purposes under the proficiency pillar and the overall assessment of the case.

³ https://www.reporter.al/2016/07/**/sekuestrohet-pasuria-me-prejardhje-kriminale-e-ish-deputetit-i-***-***/

Regarding ethics and commitment to professional values, we disagree with the assertion that traveling with the *** brothers was random. The coincidences mentioned in the assessee's narrative are numerous and unconvincing. First, he randomly meets with *** *** and travels to Montenegro, then a few weeks later with *** *** to Kosovo. Moreover, *** *** was the owner of the betting company from which the assessee obtained a confirmation letter stating that he received 7,451 Euros in 2010.

These circumstances present too many clues to be dismissed and do not support the assessee's claim that these encounters were random meetings with complete strangers. Therefore, a thorough analysis should have been conducted to assess the ethical implications of these interactions under the proficiency pillar.

b) Conflict of interest.

There is a situation of conflict of interest involving the citizen *** *** , whom the assessee declared as a friend and who donated 30,000 ALL. Mr. *** was also involved in a criminal proceeding where his company was subjected to a burglary, resulting in a considerable amount of money being stolen.

However, the IQC concluded that there is no evidence to suggest that they were friends in 2015. Additionally, there are no obvious indicators of bias on the part of the assessee, especially considering the symbolic amount of the donation. Moreover, the proceeding related to the burglary is currently suspended due to the fact that the perpetrator was not identified.

We find the rationale applied by the IQC flawed because it would be practically impossible for the prosecutor handling a case where an entity has been a victim of burglary not to know the identity of the sole shareholder and administrator of the company. In such cases, the initial step of the investigation typically involves identifying the administrator and then gathering information about the staff, shifts, security measures in place, and other relevant details.

Secondly, not only actually present conflicts of interest constitute ethical violations; magistrates should also avoid any perception of bias, and they should refrain from any situation where bias could be perceived. This perception should be based on a reasonable, fair-minded, and well-informed observer's view. The moment they become aware of such a situation, even if it appears to be a potential conflict of interest, they should flag it to their superior. This proactive approach is essential to uphold the integrity and impartiality of the judicial process.

Thirdly, dismissing the donation amount of 30,000 ALL as "symbolic" is not a valid argument, as any not entirely insignificant financial contribution could potentially influence impartiality. Furthermore, the fact that the criminal proceedings were suspended before the donation does not negate the potential conflict of interest, as the case remains pending.

In our opinion, the assessee should have requested recusal under Article 17 and 26 of the Criminal Procedure Code, which outlines the procedures for a judge to withdraw from a case due to impartiality concerns. This would have been a prudent step to ensure the integrity of the judicial process.

c) Denunciations.

Regarding denunciations, IMO suggest two of them to be further examined, namely the complaints of citizens *** ** and *** ** ;

Based on the above, we believe that there are serious indications that the assessee's conduct contravenes the fundamental values expected of a magistrate, as stipulated in art. 3, para 5 of the Status Law⁴ and international guidelines⁵ governing the behaviour of magistrates both within and outside the judiciary. This includes principles such as impartiality, integrity, and the avoidance of conflicts of interest, which are essential for upholding the trust and credibility of the judicial system.

3. Conclusions

After thorough analysis of all the facts and evidence presented during the investigation, the IOs recommend that the Public Commissioners file an appeal against the decision of the IQC to confirm the assessee in office. This recommendation is based on several key points:

⁴ "The conduct of a magistrate shall, in the course of assuming his/her function and beyond its scope, guarantee the preservation and strengthening of the confidence of the public in the justice system, the legal profession and parties who are subject of proceedings."

⁵ Consultative Council of European Prosecutors 'Rome Charter', 2014, (<https://rm.coe.int/168074738b>): Prosecutors should, at all times, conduct themselves in a professional manner and strive to be and be seen as independent and impartial. Prosecutors must earn the trust of the public by demonstrating in all circumstances an exemplary behavior. They must treat people fairly, equally, respectfully, and politely, and they must at all times adhere to the highest professional standards and maintain the honour and dignity of their profession, always conducting themselves with integrity and care.

UNODC, Commentary on the Bangalore Principles of Judicial Conduct 2007

Relevance of community standards

PG 102 "While the ideal of integrity is easy to state in general terms, it is much more difficult and perhaps even unwise to do so in more specific terms. The effect of conduct on the perception of the community depends considerably on community standards that may vary according to place and time. This should be kept in mind in considering how certain conduct might be perceived by reasonable, fair-minded, and informed members of the community, and whether such a perception is likely to diminish the community's respect for the judge or the judiciary as a whole. Conduct that is likely to diminish respect in the minds of such persons should be avoided."

A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

High standards are required in both private and public life

PG 103 "A judge must maintain high standards in private as well as in public. The reason for this lies in the broad range of human experience and conduct upon which a judge may be called upon to pronounce judgement. If the judge is to condemn publicly what he or she practises privately, the judge will be seen as a hypocrite. This inevitably leads to a loss of public confidence in the judge, which may rub off on the judiciary more generally."

1. The assessee included his father-in-law as a source for partial repayment of the loan for the creation of the asset apartment only during the investigation, without ever declaring it before in the annual or vetting declaration. This raises concerns about the completeness and accuracy of the assessee's financial disclosures.
2. The financial analysis conducted for the living expenses in the USA, especially during the assessee's spouse's pregnancy, is incomplete and lacks substantiation by evidence. This calls into question the reliability of the financial assessment conducted by the IQC.
3. There are unresolved issues related to the assessee's background and ethical/professional conduct, which may potentially undermine public trust in the judiciary.

In light of these considerations, a proper evaluation of all the elements listed above would likely lead to the dismissal of the assessee from office.

Respectfully submitted,



International Observer

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