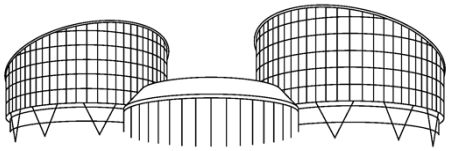

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SEVDARI v. ALBANIA

(Application no. 40662/19)

JUDGMENT

STRASBOURG

13 December 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sevdari v. Albania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 40662/19) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Albanian national, Ms Antoneta Sevdari ("the applicant"), on 29 July 2019;

the decision to give notice of the application to the Albanian Government ("the Government");

the third-party comments submitted by Res Publica, who had been granted leave to intervene by the President of the Section (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court);

Having deliberated in private on 22 November 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns re-evaluation (vetting) proceedings resulting in the applicant's dismissal from the post of prosecutor. She complained (i) that there had been a breach of her right to respect for private life under Article 8 of the Convention on account of her removal from office and the ensuing lifetime ban on her practising law as an advocate; (ii) under Article 6 § 1 of the Convention that the proceedings had been unfair; and (iii) under Article 13 of the Convention of a lack of an effective remedy in respect of her complaints under Articles 6 and 8.

THE FACTS

2. The applicant was born in 1976 and lives in Tirana. She was represented by Mr S. Powles, a lawyer practising in London.

3. The Government were initially represented by their Agent, Mr A. Metani, and, subsequently, Ms J. Mansaku, Ms E. Muçaj, Ms B. Lilo and Mr O. Moçka, General State Advocate.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The background to and aims of the reform of the justice system in Albania, including the introduction of a vetting process in 2016 by the Annex to the Constitution and the Re-evaluation of Judges and Prosecutors Act (Law no. 84/2016 – "the Vetting Act"), as well as the manner in which vetting proceedings, which all serving judges and prosecutors have to undergo, are conducted, are summarised in the Court's judgment in *Xhoxhaj v. Albania* (no. 15227/19, §§ 4-7, 9 February 2021).

6. The applicant served as a prosecutor attached to the Durres District Court from October 2003 until 2012. She was then appointed as a prosecutor attached to the Tirana District Court. From December 2018 onwards she also served as a member of the High Prosecutorial Council ("the HPC").

II. VETTING PROCEEDINGS IN RELATION TO THE APPLICANT

A. Proceedings before the Independent Qualification Commission

7. On 18 July 2018 the Independent Qualification Commission ("the IQC"), following a public hearing, unanimously confirmed the applicant in her post as prosecutor attached to the Tirana District Court. In accordance with the applicable vetting provisions (see paragraphs 36-42 below), it had evaluated her on the basis of three criteria: (i) an evaluation of her personal assets; (ii) an integrity background check aimed at determining any possible links to organised crime; and (iii) an evaluation of her professional competence.

8. As regards the evaluation of the applicant's assets, the IQC concluded on the basis of a declaration of assets filed by her in the vetting proceedings and evidence that her disclosure of assets was accurate and complete and that her and her husband's assets were lawful. The integrity background check, conducted on the basis of an integrity background declaration submitted by her, did not give cause for concern either. As to the evaluation of the applicant's professional competence, the IQC, having regard to a professional self-appraisal form submitted by her and having examined reports as well as denunciations received from the public on her performance, concluded that she was professionally competent.

B. Proceedings before the Special Appeal Chamber

1. Conduct of the proceedings by the Special Appeal Chamber

9. On 29 August 2018 the Public Commissioner lodged an appeal with the Special Appeal Chamber ("the SAC") against the IQC's decision. He argued that the IQC's investigations had not shown that the applicant met the

requirements of the Vetting Act both as regards the evaluation of her assets and the evaluation of her professional competence.

10. The applicant was subsequently granted access to the case file.

11. On 17 September 2018 the judges sitting in the applicant's case were drawn by lot and the applicant was subsequently informed of the composition of the SAC (a separate chamber of the Constitutional Court). She neither requested the recusal nor alleged the ineligibility of any of the SAC judges.

12. The SAC held public hearings on three separate days (13, 19 and 25 February 2019) before delivering its decision on 28 February 2019. The applicant was given the opportunity to make submissions, request that the SAC admit new evidence or name witnesses.

2. Decision of the Special Appeal Chamber

13. On 28 February 2019 the SAC reversed the IQC's decision and dismissed the applicant from her post as prosecutor. It found that she had made an insufficient disclosure of assets within the meaning of section 61(3) read in conjunction with section 33(5)(b) of the Vetting Act and Article D §§ 1 and 3 of the Annex to the Constitution (see paragraphs 42, 40 and 38 below) in that she had not proven the lawfulness of the financial resources used to acquire part of her real estate and the lawfulness of some of her husband's income. Moreover, making an overall assessment of the three criteria (section 4(2) of the Vetting Act, see paragraph 36 below), the SAC concluded that the applicant had undermined public trust in the justice system (section 61(5) of the Vetting Act, see paragraph 42 below).

(a) Evaluation of the applicant's assets

(i) Plot of land and house in Yzberisht, Tirana

14. A plot of land and house in Yzberisht, Tirana, were acquired by the applicant's then future husband and his relatives between 2000 and 2003, when the applicant was not yet a prosecutor. The IQC did not therefore evaluate this asset. The SAC, however, in line with the Public Commissioner, considered that the assessment of assets within the framework of the vetting process should extend to assets acquired prior to the applicant's appointment as prosecutor and to the legality of the sources of income used for their creation. The applicant had argued that assets created prior to her appointment as prosecutor could not be considered to have been created by corrupt acts or illegal activities that could affect her integrity as a prosecutor.

15. The applicant had declared in her vetting declaration that the plot of land and house had been acquired with her husband's income of 3,000,000 lek (ALL – approximately 22,000 euros (EUR) at the time), which he had earned as an emigrant in Greece from 1997 to 2000 (before she was married to him) and with EUR 12,000 euros which he had earned through his work as engineer in Saudi Arabia in 2003.

16. The SAC concluded in this regard that the applicant had made an insufficient disclosure of assets because she had insufficient lawful sources to justify the plot of land and house for the purposes of section 61(3) of the Vetting Act read in conjunction with Article D § 3 of the Annex to the Constitution. For vetting purposes, only income that had been previously declared and on which tax had been paid could be considered lawful. As a result, the applicant could only rely on income that met both these conditions in order to justify the acquisition of any real estate.

17. As to the income which the applicant's husband had earned as an emigrant in Greece, the SAC found that the applicant had not submitted sufficient supporting documents or other evidence to show that the income transferred from Greece to Albania in the form of remittances had been lawful. She had failed to prove that her husband had been employed in Greece during the period concerned, and had not specified the exact amount of income earned and the exact amount thereof transferred to Albania.

18. As to the income earned by the applicant's husband in Saudi Arabia in 2003, the SAC observed that the applicant and her husband had disclosed this for the first time in 2016 in the framework of the vetting process and that they had been unable to convincingly explain the reasons for its non-disclosure in time. The SAC further concluded that the applicant had not submitted complete and sufficient proof to show that the source of her husband's income in this regard had been lawful. The documents submitted by her and declarations by the employer company contained "indications" about the related person's (her husband's) professional engagement and the acquisition of income in exchange. However, she had not provided the necessary documents fully clarifying the manner in which this income had been paid and proving that tax had been paid on it by the company. The couple had further failed to demonstrate that it was objectively impossible for them to provide these documents.

(ii) Husband's income from work in Saudi Arabia in 2006

19. In her vetting declaration, the applicant had further declared financial assets in the amount of some 20,000 US dollars (USD), which had been earned by her husband in Saudi Arabia in 2006. The SAC also found in this regard that she had made an insufficient disclosure of assets, within the meaning of section 61(3) of the Vetting Act read in conjunction with Article D § 3 of the Annex to the Constitution, as she had failed to prove that her husband had complied with the relevant income tax obligations.

20. The SAC considered that the documents provided by the applicant proving that her husband had been living and providing services in Saudi Arabia during the relevant period were credible, but that they did not constitute "complete proof" in the absence of an employment contract and proof that the relevant bank transfers had been made from Saudi Arabia and on behalf of the company to which he had provided services.

21. The SAC further found that the applicant had not provided any supporting documents to prove that her husband had paid tax in Albania on this income or proof that he had paid tax in Saudi Arabia, or that it was objectively impossible for her to provide the necessary documents.

(iii) Other assets

22. Other real estate and income of the applicant and her husband from domestic sources evaluated by the SAC were considered lawful.

(b) Evaluation of the applicant's professional competence

23. The SAC found that none of the denunciations received from the public regarding the applicant's professional competence had disclosed a lack of professional competence on her part.

24. As regards the assessment of several cases dealt with by the applicant and selected for vetting review, the SAC found that in one of these cases, which had concerned charges against a public official for failure to duly declare his assets, the applicant had missed the deadline for filing an appeal against the first-instance court's decision to dismiss the charges. Her subsequent application for leave to appeal out of time owing to family hardship had been rejected. The SAC concluded in this regard that even if the results of the investigation confirmed that the applicant had shown a lack of knowledge of the case-law related to a specific legal concept and inefficiency in managing complex situations in the exercise of her duties, the case in question was isolated and therefore insufficient in itself to find that she was professionally unfit. The SAC considered, however, that the fact that the case was related to the declaration of assets of a public official, even if isolated, affected public confidence in the justice system. As a prosecutor specialising in tax-related offences, it undermined public confidence in the justice system if her own family members failed to comply with tax laws.

(c) Overall assessment

25. The SAC therefore concluded that, on the basis of an overall assessment of the three re-evaluation criteria, the applicant had also undermined public trust in the justice system, for the purposes of section61(5) of the Vetting Act.

(d) Dissenting opinion

26. One of the members of the panel, I.R., filed a dissenting opinion, supporting the position that the applicant should not be dismissed from her post as prosecutor. I.R. took the view that the applicant had not made an insufficient disclosure of assets under sections 61(3) and 33 of the Vetting Act. She had proven the lawful sources of her assets in so far as she had sufficiently proven the existence of her husband's income and the fact

that it had originated from lawful gainful (rather than criminal) activity. In the dissenting judge's view, failure to prove the payment of tax on such income should not always lead to the conclusion that there were insufficient lawful sources to justify the person's assets and thus an insufficient disclosure of assets resulting in dismissal from office under section 61(3) of the Vetting Act. In such circumstances, section 61(1) of the Vetting Act should apply, that is, only when the declared assets of the person being vetted were greater than twice the value of the assets obtained with taxed income was there cause for dismissal. This was not, however, the case for the applicant; the impugned income amounted to 9.5% of the total income. I.R. further took the view that it was disproportionate to dismiss the applicant for undermining public trust in the justice system, given that she had successfully prosecuted many important public finance cases.

(e) International Observer's opinion

27. The International Observer of the International Monitoring Operation ("the IMO") – an international body led by the European Commission established by Article B of the Annex to the Constitution to support, monitor and oversee the re-evaluation process – also issued a dissenting opinion, dated 25 April 2019. He considered that it was disproportionate to sanction the applicant with dismissal. He took note of the SAC's finding that she had complied with her obligation to declare her assets and the related sources of income. The SAC had, however, considered (in contrast to the IQC's findings) that she had failed to provide sufficient justification for her assets, that is, she had not submitted sufficient documents proving the lawfulness of the alleged sources of income, in particular proof of the payment of tax on that income.

28. The International Observer considered that the SAC's expansive interpretation of "insufficient disclosure of assets" in section 61(3) of the Vetting Act as a ground for dismissal contravened Article D §§ 4 and 5 of the Annex to the Constitution and produced disproportionate results. He argued, in particular, that a finding of "insufficient disclosure" under section 61(3) of the Vetting Act could only be reached if the person being vetted had committed a falsity, in particular when there was proof that he or she had not possessed the source of income claimed (which the SAC had not found in the applicant's case). Failure to justify the disclosed assets could be sanctioned under section 61(1) of the Vetting Act if its requirements were met (that is, if the unjustified assets were more than half the total amount of assets), which was not the case with the applicant either. If failure to justify declared assets was sanctioned as insufficient disclosure, section 61(1) of the Vetting Act would become irrelevant and the safeguard of the "twice as much" threshold would no longer apply.

29. As to the proficiency assessment, the International Observer took the view that failure to file an appeal in one case by the deadline could not be

given any significant weight. He noted that an appeal was to be filed owing to the general instructions for the prosecution to do so whenever the court had decided against the prosecution's requests; the appeal in question had not had any reasonable prospects of success so the shortcoming had been of a merely formal nature. The shortcomings disclosed altogether were not significant enough to justify the conclusion that the applicant had undermined public trust in the justice system for the purposes of section 61(5) of the Vetting Act.

III. SUBSEQUENT DEVELOPMENTS

A. The applicant's professional life following the SAC's decision

30. On 19 March 2019 the HPC, having regard to the applicant's dismissal as a prosecutor, dismissed her as a member of the HPC.

31. The applicant, who obtained a licence to practise as a lawyer from the National Chamber of Advocates on 6 May 2016, was registered in its register of lawyers actively practising the profession as of 7 March 2019 and subsequently started practising as a lawyer.

B. Proceedings regarding Judges L.D. and A.H.

32. On 4 December 2019 the SAC dismissed a request lodged by the applicant after the termination of the vetting proceedings against her (on 23 May 2019) for the institution of disciplinary proceedings against two members of the SAC, L.D. and A.H. and for termination of their mandate under the constitutional and statutory provisions governing the removal from office of Constitutional Court judges on which the applicant had relied.

33. On 20 November 2019 the IMO, which was competent under section 17 of the Vetting Act to examine requests for disciplinary proceedings from the public, informed the applicant that despite the allegations raised by her against Judges L.D. and A.H., none of the grounds under section 16 of the Vetting Act on which IMO members could initiate disciplinary proceedings could be invoked.

34. On 24 July 2020, following the institution of criminal proceedings against Judge L.D., which had been initiated on the basis of a criminal complaint lodged by Mr B. Cani (the applicant in application no. 37474/20 before this Court), the SAC decided to suspend L.D. from office. L.D. was subsequently convicted of forgery of documents. He was found to have submitted false information in his application for the position of judge of the SAC as he had failed to disclose that he had been dismissed from office as a judge in 1997 (see, for further information in this regard, *Besnik Cani v. Albania*, no. 37474/20, §§ 8-31, 4 October 2022 (not final)).

35. On 28 October 2022, the Constitutional Court quashed, on fair trial grounds, the decision of the Supreme Court confirming the criminal

conviction of L.D. and ordered the rehearing of the case by the Supreme Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC MATERIAL

A. General background to and functioning of the vetting proceedings in Albania

36. The transitional re-evaluation of judges and prosecutors in Albania is governed by Article 179/b of the Constitution, the Annex to the Constitution and the Re-evaluation of Judges and Prosecutors Act (Law no. 84/2016 – "the Vetting Act"), which entered into force on 8 October 2016. Article 179/b of the Constitution provides for a one-time re-evaluation of all serving judges and prosecutors with a view to guaranteeing the functioning of the rule of law, the independence of the justice system and the restoration of public trust in the institutions of that system. Re-evaluation is carried out by the Independent Qualification Commission ("the IQC") at first instance and the Special Appeal Chamber ("the SAC"), attached as a separate chamber to the Constitutional Court, on appeal. Re-evaluation consists of an evaluation of assets, an integrity background check and an evaluation of professional competence (see Article Ç § 1 of the Annex to the Constitution and section 4(1) of the Vetting Act). The evaluation decision is based on only one or several of these components, or on an overall assessment of all three components and an overall assessment of the proceedings (section 4(2) of the Vetting Act).

37. The relevant legal framework and practice regarding the vetting proceedings introduced in Albania in 2016 are summarised in the judgment in *Xhoxhaj* (cited above, §§ 93-226). The provisions and practice referred to in the present case are as follows.

B. Provisions governing the evaluation of assets

38. Article D of the Annex to the Constitution, which governs the evaluation of assets, reads as follows:

Article D – Evaluation of assets

"1. Persons to be vetted shall disclose their assets, and have them evaluated, in order to identify persons who possess or use more assets than can be lawfully justified, or those who have failed to make an accurate and full disclosure of their assets and those of related persons.

2. The person to be vetted shall file a new and detailed declaration of assets in accordance with the law. The High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest [HIDAACI] shall verify the declaration of assets and provide

the [IQC] with a report concerning the lawfulness of the assets, as well as the accuracy and completeness of the asset disclosure.

3. The person being vetted shall provide convincing explanations concerning the lawful source of his or her assets and income. For the purposes of this law, assets will be considered lawful if the income has been declared and subject to the payment of tax. Additional elements of lawful assets shall be determined by law.

4. If the person being vetted has [total] assets greater than twice the value of lawful assets, the person shall be presumed guilty of a disciplinary breach, unless [he or she] submits evidence to the contrary.

5. If the person to be vetted does not file the declaration of assets within the time-limit prescribed by law, [he or she] shall be dismissed from office. If the person being vetted endeavours to conceal or make an inaccurate disclosure of assets in his or her ownership, possession or use, a presumption in favour of the disciplinary sanction of dismissal from office shall apply and the person will be required to prove the contrary."

39. Section 3 of the Vetting Act contains the following definition of "related persons":

"(13) 'Related persons' shall mean the circle of individuals related to the person to be vetted, public commissioner or judge, consisting of the spouse, live-in partner, adult children, as well as any other individual whose name appears on the family certificate as provided by the civil registry office to the person to be vetted, commissioners, public commissioners or judges for the period of re-evaluation ..."

40. The relevant part of section 33 of the Vetting Act, on the re-evaluation procedure, provides:

"5. Upon completion of the audit, the Inspector General of HIDAACI [High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest] shall draw up a reasoned and detailed report [on the declaration of each person being vetted] stating whether:

(a) the declaration is accurate [and] in compliance with the law, [supported] by legitimate financial sources and there is no conflict of interest;

(b) there is a lack of legitimate financial sources to justify the assets;

(c) there has been a concealment of wealth/assets;

(ç) a false declaration was made;

(d) the [person being vetted] has been involved in a conflict of interest."

C. Disciplinary sanctions

41. Article Ë § 1 of the Annex to the Constitution and sections 58 and 66 of the Vetting Act provide that on the conclusion of the proceedings, the vetting bodies may either confirm the person being vetted in his or her post or impose one of the following disciplinary sanctions: suspension from office for one year accompanied by an obligation to attend a training programme run by the School of Magistrates, or dismissal from office.

42. Under section 61 of the Vetting Act, dismissal from office may be ordered if it appears that:

"1. the person being vetted has declared [total] assets greater than twice the value of lawful assets belonging to him or her and related persons;

2. there are serious concerns about the integrity background check because the person being vetted has had inappropriate contact with individuals involved in organised crime, which renders it impossible for him or her to continue in his or her position;

3. the person being vetted has made an insufficient disclosure of assets and integrity background [declaration] under sections 39 and 33 of this Act;

4. as regards the evaluation of professional competence, the person being vetted is professionally unfit;

5. on the basis of the overall conduct [of the proceedings], within the meaning of section 4(2) ... the person being vetted has undermined public trust in the justice system and it is impossible to remedy the deficiencies by means of a training programme."

D. Provisions and practice regarding challenges to the composition of the SAC

43. The relevant parts of section 27 of the Vetting Act, on guarantees of impartiality, provide:

"1. The members of the vetting bodies shall declare and avoid any situation of conflicts of interest, based on the [Prevention of Conflicts of Interest in the Exercise of Public Office Act]. Any decision taken in a situation of conflicts of interest, apart from any legal consequences in the decision-making process, shall constitute serious disciplinary misconduct.

2. In the event that a member of the vetting bodies is unable to decide an assigned case for the reasons mentioned in Article 30 of the Code of Administrative Procedure or the [Prevention of Conflicts of Interest in the Exercise of Public Office Act], he or she shall immediately notify the panel in writing. The decision on exclusion of a commissioner [of the IQC], judge or Public Commissioner shall be taken by another panel drawn by lot.

..."

44. As to the Constitutional Court's practice regarding complaints of non-compliance by members of the vetting bodies with the statutory eligibility criteria, on 29 April 2020 it rejected as inadmissible a complaint lodged by Mr B. Cani (see paragraph 34 above) requesting to have Parliament's decision to appoint L.D. to the SAC declared unconstitutional.

45. In so far as Mr Cani had complained under Article 131 § 1 (f) of the Constitution that L.D.'s appointment to the SAC in breach of domestic law had violated his individual right to a "tribunal established by law" in the course of the vetting proceedings, the Constitutional Court dismissed the complaint, reasoning as follows:

"20. Returning to the present case, the [Constitutional Court's] Bench notes that the applicant alleges a violation of his right to a fair hearing by virtue of an act undertaken by a public authority before the end of the proceedings before the SAC, and, consequently, does not raise any claim against the final outcome of the [vetting] process. He challenged ... the appointment [of L.D. to the SAC] and [requested] the

partial invalidation of the decision of Parliament appointing L.D. as a member of the SAC.

21. The Constitutional Court has emphasised that the right to fair hearing, including complaints related to a tribunal established by law, is guaranteed during a legal or judicial process, in connection with the final result [*ne funksion të rezultatit përfundimtar*] which generates concrete and direct consequences for applicants as holders of procedural and substantive constitutional rights. The Bench considers that in the process of transitional re-evaluation too, the procedural rights of the individuals being re-evaluated should be guaranteed within the judicial process conducted by the [SAC], in accordance with the competencies assigned to them by the Constitution and the law.

...

23. Furthermore, the Bench notes that the jurisdiction of the Constitutional Court in reviewing the individual constitutional complaint of the applicant in respect of his re-evaluation process as a prosecutor, is limited by the powers that the Constitution itself, in its Annex, has conferred to the re-evaluation bodies. Thus, paragraph 2 of Article 179/b of the Constitution provides that the re-evaluation process, which is carried out by the IQC and the SAC, will be based on the principle of a fair hearing and respect for the fundamental rights of the individuals being re-evaluated.

...

24. The Bench reiterates that the constitutional procedural rights ... including the right to a "tribunal established by law", have been guaranteed by the Constitution to the individuals being re-evaluated, by virtue of the judicial process carried out by the SAC and, subsequently, by virtue of the possibility of exercising the right to complain to the European Court of Human Rights. In view of the powers of the SAC to hear appeals against the decisions of the IQC, the court has held that this [appeal] process includes a review of the compatibility of the proceedings with the Constitution ..."

E. Provisions on the review of final judgments

46. Under section 4(6) of the Vetting Act, read in conjunction with section 1(2) of the Administrative Courts Act (Law no. 49/2012 on the organisation and functioning of the administrative courts), the vetting bodies may in certain circumstances also apply provisions of the Code of Civil Procedure. Article 494 of the Code of Civil Procedure provides that a party may request the review of a decision which has become final in certain circumstances, namely when:

"a) new circumstances or new written evidence are discovered that are pertinent to the case, which could not have been known by the party during its consideration;

b) it is proven that the statements of witnesses or expert opinions contributing to the decision were false;

c) the parties, their representatives or any members of the adjudicating body who participated in the trial of the case have committed criminally punishable acts influencing the decision;

ç) it is proven that the decision was based on forged documents;

d) the decision is based on a decision of the court or of another institution which was subsequently revoked;

dh) the decision has been taken in clear contradiction with another irrevocable decision taken for the same parties, the same subject and for the same cause;

e) where the European Court of Human Rights finds a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, ratified by the Republic of Albania."

F. Provisions regarding the status of prosecutors

47. Under section 32 of the former Prosecutor's Office Act of 12 February 2001 (Law no. 8737/2001 on the organisation and functioning of the prosecutor's office), as amended, disciplinary violations included, *inter alia*, actions that seriously discredited the prosecutor's function or that, pursuant to the law, were incompatible with it. Under section 33 of that Act, such violations were punishable by a reprimand, a notice with warning of dismissal from office, transfer to a lower position or dismissal from office.

48. The Constitutional Court stated that serious actions discrediting the official function included inappropriate and unworthy conduct either in the performance of official duties or outside the performance of those duties (decision no. 75/2002).

49. The Status of Judges and Prosecutors Act of 6 October 2016 (Law no. 96/2016 on the status of judges and prosecutors) determines the status of "magistrates", namely judges and prosecutors (section 2(gj)). The relevant part of section 3 of that Act, on fundamental values, provides:

"5. The conduct of a magistrate shall, in the course of assuming his or her function and beyond its scope, guarantee the preservation and strengthening of public confidence in the justice system, the legal profession and parties who are the subject of proceedings. A magistrate shall exercise his or her functions in a fair, accurate, timely, reasonable, conscious, cautious, dedicated and systematic manner, with objectivity, self-restraint and maturity."

G. Provisions regarding the exercise of the lawyers' profession

50. Under section 13(1) of the Lawyers Act (Law no. 55/2018 of 23 July 2018 on the lawyers' profession), a person is qualified to act as a lawyer if he or she has obtained the title of "advocate" and has been admitted as an advocate on the strength of a certificate (licence) issued by the National Chamber of Advocates (namely the Bar Association). Section 13(2) lists a number of general requirements that have to be satisfied in order for a person to be admitted as an advocate, the most relevant, for the purposes of this case, being that "a person shall not have been removed from duty or a public function, on account of [a breach of] ethical integrity, by a final decision of the competent authority, save for cases where the disciplinary sanction has been extinguished by virtue of a specific law".

II. RELEVANT INTERNATIONAL MATERIAL

51. The relevant parts of the European Guidelines on Ethics and Conduct for Public Prosecutors ("the Budapest Guidelines"), adopted by the Council of Europe Conference of Prosecutors General of Europe on 31 May 2005, provide:

> **IV. Private conduct**
>
> "a. Public prosecutors must not compromise the actual or the reasonably perceived integrity, fairness and impartiality of the public prosecution service by activities in their private life.
>
> b. Public prosecutors shall respect and obey the law at all times.
>
> c. Public prosecutors should conduct themselves in such a way as to further and retain public confidence in their profession.
>
> ..."

52. The relevant parts of Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, issued by the Council of Europe's Consultative Council of European Prosecutors (CCPE), provide:

> "22. The conduct of prosecutors, like that of judges, cannot be left to their sole discretion, be it within and outside their work. This is particularly important when assessing the activities of prosecutors and in disciplinary proceedings against them.
>
> ...
>
> 51. The respect for the rule of law requires the highest ethical and professional standards in behaviour of prosecutors, as for judges, both on duty and off, which allows confidence in justice by society. Prosecutors act on behalf of the people and in the public interest. They should therefore always maintain personal integrity and act in accordance with the law, fairly, impartially and objectively, respecting and upholding fundamental rights and freedoms, including the presumption of innocence, the right to a fair trial, and the principles of equality of arms, separation of powers, and binding force of court decisions. They have a duty to be free from political or other influence."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

53. The Government submitted that the applicant had abused her right of application since her complaint that she had been unable to practise her profession after the conclusion of the vetting proceedings was based on untrue facts. In particular, they argued that contrary to her submissions in her application to the Court, she was currently practising as a lawyer.

54. The applicant contested that view. She claimed that she had submitted in her application, and maintained, that as a result of her dismissal in the vetting proceedings there was a lifetime ban on her practising law as an advocate under section 13(2) of the Lawyers Act (see paragraph 50 above).

She therefore risked being disbarred at any moment without any possibility of ever enrolling again.

55. The Court reiterates that under Article 35 § 3 (a) of the Convention an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV, and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014). The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 (formerly Rule 47 § 6) of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 63, 15 September 2009, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 97, ECHR 2012). However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Centro Europa 7 S.r.l. and Di Stefano*, § 97, and *Gross*, § 28, both cited above).

56. Having examined the case file and the parties' submissions in the light of the foregoing principles, the Court considers that the applicant's submissions could have been clearer as regards the fact that she had in practice started working as a lawyer following her dismissal as a prosecutor. However, in view of the explanations given by her, the Court does not find it established that she withheld that information, which does not concern the very core of her case on her dismissal in vetting proceedings, in a deliberate attempt to mislead the Court. The Government's objection in this regard must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

57. The applicant complained that her removal from office as a prosecutor and the ensuing lifetime ban on her practising law as an advocate had breached her right to respect for her private life as provided in Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the

country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. Complaint concerning the applicant's dismissal from office

58. Referring to the criteria established in the Court's judgment in the case of *Denisov v. Ukraine* ([GC], no. 76639/11, §§ 123 and 125, 25 September 2018), the Government submitted that Article 8 was not applicable in respect of the applicant's complaint about her dismissal. She had not proven that her removal from public office as a prosecutor had affected her private life to a sufficiently serious extent as she was instead practising law as an advocate.

59. The applicant argued that her dismissal as a prosecutor had considerably affected her private life and that, having regard to the criteria established in the case of *Denisov* (cited above, §§ 107 and 114), Article 8 was thus applicable. The loss of her job and salary had resulted in a worsening of her and her family's material well-being. She had further lost professional opportunities; her reputation had been damaged and she had been stigmatised in the eyes of society because of her removal from the judiciary.

60. The Court refers to the criteria established in its case-law for employment-related disputes to fall within the scope of private life within the meaning of Article 8, including the need for an applicant to show that the threshold of severity was attained where an issue under Article 8 arose because of the consequences of the impugned employment-related measure for his or her private life (the "consequence-based approach", see *Denisov*, cited above, §§ 115-17). It further refers to its conclusions in the case of *Xhoxhaj* (cited above), in which it found that Article 8 was applicable regarding the dismissal from judicial office of the applicant in that case pursuant to the Vetting Act (ibid., §§ 362-64).

61. In the present case, the Court observes that the applicant was dismissed from office as a career prosecutor pursuant to the Vetting Act, losing her function within the justice system and her remuneration with immediate effect. This undoubtedly had serious consequences for her "inner circle", that is, her well-being and that of her family members. In the Court's view, the fact that she was subsequently able to take up a different legal profession and to practise law as an advocate does not call into question this finding. Furthermore, the vetting bodies examined her professional competence and concluded that she had undermined public trust in the justice system (see paragraph 13 above). Her dismissal particularly on that ground, and based on the Vetting Act, which had been passed in order to combat corruption, further meant that in the eyes of society, she was stigmatised as being unworthy of performing the function of a prosecutor.

62. The Court concludes that her dismissal from prosecutorial office affected her private life to a very significant degree. Article 8 is therefore applicable and the Government's objection in this regard must be dismissed.

63. The Court notes that this part of the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. Complaint concerning the lifetime ban on the applicant's practising as a lawyer

64. The Government submitted that the applicant's complaint that she had been unable to practise her profession after the conclusion of the vetting proceedings was manifestly ill-founded. She was currently practising as a lawyer in Tirana after the National Chamber of Advocates had registered her at her request (see paragraph 31 above). Neither the Vetting Act nor any decision taken by the vetting bodies had prevented her from doing so. They confirmed that section 13(2) of the Lawyers Act (see paragraph 50 above) provided that persons who had been dismissed by a final decision from public office for problems related to ethics in employment relations could not practise as lawyers. However, the applicant had not been dismissed for committing a crime or for ethical reasons for the purposes of that provision.

65. The applicant submitted that she had held a licence with the National Chamber of Advocates since 6 May 2016, which she had not concealed, and had started practising as an advocate sometime after her dismissal as a prosecutor. However, under section 13(2) of the Lawyers Act she risked being disbarred at any moment as a result of her dismissal in the vetting proceedings without any possibility of ever enrolling again and therefore had victim status for being directly affected by that Act. According to debates in Parliament, section 13(2) was to apply to judges and prosecutors who had been dismissed in vetting proceedings. She further referred to the example of another prosecutor, Ms B. Nikehasani (the applicant in application no. 58997/18 before this Court), whose request to start the process to obtain a licence to practise as a lawyer had been refused by the National Chamber of Advocates owing to her dismissal in vetting proceedings.

66. The Court refers to the requirements laid down in its case-law for an applicant to be able to claim to be a victim of a violation of a Convention right within the meaning of Article 34 of the Convention (see, *inter alia*, *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010, with further references, and *Michaud v. France*, no. 12323/11, § 51, ECHR 2012). It observes that in the present case, it is uncontested that the applicant not only held a licence permitting her to practise as a lawyer, she was also registered following her dismissal as a prosecutor and has in fact been practising as an advocate since (see also paragraph 31 above). The vetting bodies did not take any decision whatsoever concerning her right to practise as a lawyer. Her fear that she may become a victim of a breach of the Convention by being

disbarred in the future by the National Chamber of Advocates is not sufficient for her to claim that she risked being directly affected by section 13(2) of the Lawyers Act and that she was thus a victim of a violation of her Convention rights in this regard (compare also *Xhoxhaj*, cited above, §§ 370-73).

67. This part of the application is therefore incompatible *ratione personae* with the provisions of the Convention and must be dismissed in accordance with Article 35 §§ 3 (a) and 4.

B. Merits

1. Whether the applicant's dismissal constituted an interference

68. Repeating in essence their submissions regarding the applicability of Article 8 to the applicant's dismissal from office (see paragraphs 58-59 above), the applicant argued that her dismissal had interfered with her right to respect for her private life while the Government submitted that there had been no such interference.

69. The Court considers that, in view of its findings concerning the applicability of Article 8 (see paragraphs 61-62 above), the applicant's dismissal from office did constitute an interference with her right to respect for her private life (compare also *Xhoxhaj*, cited above, § 377, with further references).

2. Whether the interference was justified

(a) In accordance with the law

70. The applicant submitted that the decision to dismiss her had not been "in accordance with the law". The legal provisions on which it had been based were couched in such broad terms that they did not satisfy the requirement of foreseeability. In particular, the domestic authorities had broadly interpreted section 61(3) of the Vetting Act (see paragraph 42 above) on which they had based her dismissal. A finding of "insufficient disclosure" under section 61(3) of the Vetting Act, read in conjunction with section 33, leading to dismissal from office, should only be made if a person failed to fully declare his or her assets – a finding which the authorities had not made in her case. In cases in which a person only failed to fully justify the declared assets – which the authorities had found in her case as she had been unable to present evidence that her husband had paid tax on some of his past earnings – section 61(1) of the Vetting Act should apply. Under that provision, the person being vetted was only subject to dismissal if he or she had declared total assets greater than twice the value of lawful assets, which had not been case with her. In addition, section 61(3) of the Vetting Act failed to define when a disclosure of assets was "insufficient" and thus reached the requisite threshold of gravity to justify removal from office. The SAC's interpretation of section 61(3) of the Vetting Act meant that any shortcoming could be interpreted as an

"insufficient disclosure". The applicant also referred to the dissenting opinion of the International Observer of the IMO in this regard (see paragraphs 27-28 above).

71. The applicant further argued that section 61(5) of the Vetting Act, on which her dismissal had also been based, was also unclear and thus gave the vetting bodies unfettered discretion to dismiss a person being vetted. There was no definition of the requirement for a person being vetted to have "undermined public trust in the justice system" and no indication of what kind of professional shortcomings reached the required level of severity to justify dismissal from office. She had been found to meet these requirements as she had missed the deadline for appeal in one case on health grounds.

72. The Government took the view that even assuming that the dismissal had interfered with the applicant's right to respect for her private life, that interference had been prescribed by the Constitution and the Vetting Act, which clearly laid down the vetting procedure and the possible consequences thereof, and had thus been "in accordance with the law" within the meaning of Article 8 § 2.

73. The Court refers to its well-established case-law regarding the conditions for a measure to be "in accordance with the law", including, in particular, the requirement of foreseeability, that is to say that the law in question must set forth with sufficient precision the conditions under which the measure may be applied (see, *inter alia*, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I, and *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts)).

74. In *Xhoxhaj* (cited above, §§ 385-88), the Court concluded that the dismissal of the applicant in that case, based on section 61(3) and (5) of the Vetting Act, had been in accordance with the law within the meaning of Article 8 § 2.

75. The Court notes that in the present case the applicant's dismissal was based on the same provisions of the Vetting Act. It further observes that, according to the established case-law of the domestic vetting bodies, section 61(3) of the Vetting Act must be read together with section 33(5) and Article D §§ 1 and 3 of the Annex to the Constitution (see paragraphs 40 and 38 above). It is clear from these provisions that, for vetting purposes, an individual's income or revenue will only be considered lawful if it has been properly declared and tax was paid on it. In these circumstances, the Court considers that the legal provisions on which the applicant's dismissal was based satisfy the requirement of foreseeability. The decision to dismiss her was thus "in accordance with the law".

(b) Legitimate aim

76. In the applicant's view, the interference with her right to respect for her private life had not served any legitimate aim for the purposes of Article 8 § 2. She submitted that, in practice, the vetting process was used as a tool to

serve political interests by constantly intimidating judges and prosecutors, which weakened their independence.

77. The Government argued that the interference had pursued the legitimate aim of combating corruption in the judicial system.

78. In the case of *Xhoxhaj*, the Court found that the measures provided for by the Vetting Act, which was passed in order to ensure the functioning of the rule of law, the independence of the justice system and the restoration of public trust in that system (see paragraph 36 above), in general served the interests of national security, public safety and the protection of the rights and freedoms of others within the meaning of Article 8 § 2. In reaching that conclusion, the Court took note of both national reports and international reports (notably those of the Group of States against Corruption (GRECO)) concluding that there was a high incidence of corruption in the justice system. It further considered the findings of both the Constitutional Court and the European Commission for Democracy Through Law ("the Venice Commission") that the vetting of judges and prosecutors was necessary to protect the Albanian justice system from corruption and other integrity and professionalism challenges (ibid., §§ 391-93, with further references).

79. The Court sees no reason to doubt that the interference with the applicant's right to respect for her private life by her dismissal from office accordingly had similar objectives and thus pursued the aims of protecting national security, public safety and the rights and freedoms of others within the meaning of Article 8 § 2.

(c) Necessary in a democratic society

(i) Submissions of the parties and the third-party intervener

80. The applicant submitted that her dismissal had been clearly disproportionate to the aim pursued. The Vetting Act (in particular section 58, see paragraph 41 above) did not set out a scale of sanctions and rules to ensure that the sanction of dismissal was applied in accordance with the principle of proportionality (she referred to *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 182, ECHR 2013). Furthermore, there were no procedural safeguards to prevent an arbitrary application of the Vetting Act (she referred to *Oleksandr Volkov*, cited above, § 170). Her dismissal had been disproportionate in the circumstances of the case, given the conduct on which it had been based. The assets assessment had been based on the fact that she had been unable to adduce evidence that her husband had duly paid tax on his income in Greece and Saudi Arabia, including in respect of periods in which she had not been in a spousal relationship with him. It also had to be taken into account in this regard that Albanian tax laws on income earned abroad had been unclear at the relevant time and that her husband had acted in good faith. In relation to the professional competence assessment, she had been

reproached for having missed the deadline for appeal in one case on health grounds.

81. The Government argued that the applicant's dismissal had been necessary in a democratic society. They stressed in respect of the assets assessment that the applicant had been unable to prove the legal source of ALL 3,000,000 and EUR 12,000 as she could not show that that money had come from legitimate employment and that the tax liabilities had been discharged. She had further not proven the legal source of some USD 20,000 as her husband had not paid the relevant tax. Furthermore, as to the professional competence assessment, she had failed to appeal against a court decision dismissing the charges against a senior official suspected of non-declaration of assets. It had to be taken into account in that context that the applicant, as a prosecutor, had been the head of the economic crime section focusing on tax evasion. It undermined confidence in the justice system if a prosecutor charging others with tax evasion or not appealing against a decision acquitting a senior official of tax evasion was found not to have discharged her own tax liabilities.

82. Res Publica, a non-governmental organisation promoting the protection of and respect for human rights, argued, in particular, that the provision of only two disciplinary measures in the Vetting Act, namely dismissal or the obligation to attend training, showed the structural lack of proportionality of the disciplinary sanctions. Furthermore, the third-party intervener stressed that the SAC's interpretation of the Vetting Act left no room for assessing the proportionality of sanctions in the event of merely inadequate asset declarations, as opposed to declarations in which assets were hidden with intent.

(ii) The Court's assessment

83. The Court reiterates that any interference with the right to respect for private life will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see, for example, *Fernández Martínez*, cited above, § 124, and *Ivanovski v. the former Yugoslav Republic of Macedonia*, no. 29908/11, § 180, 21 January 2016).

84. The Court, having regard to the findings of both national and international bodies concluding that there was a high incidence of corruption in the Albanian justice system (see paragraph 78 above and the references cited therein), considers that the reform of the justice system entailing the extraordinary vetting of all serving judges and prosecutors and potentially their dismissal responded to a "pressing social need" (compare also *Xhoxhaj*, cited above, § 404).

85. The Court notes that certain failures by public officials to comply with obligations related to asset declarations can be generally considered serious.

These may include, among other things, failures to declare major assets or sources of income or deliberate attempts to conceal them from the authorities; an inability to justify major purchases through legitimate and sufficient savings or resources held at the time of acquisition; or an inability to justify an excessive lifestyle or extravagant spending that is clearly beyond the declared lawful means of the relevant official and his family. The Court has also recognised in this regard that it may be legitimate to take account of the income and declarations of the official's spouse, partner or other member of the immediate family in assessing the official's compliance with anti-corruption laws (see *Samoylova v. Russia*, no. 49108/11, §§ 85-86, 14 December 2021). At the same time, not every minor instance of non-compliance with asset declaration regimes, or insignificant discrepancy between spending and lawful resources, should trigger the most serious disciplinary sanctions, such as dismissal from office.

86. As to the proportionality of the applicant's dismissal to the legitimate aims pursued, the Court reiterates that dismissal from office – notably of judges or prosecutors with life tenure status – is a grave, if not the most serious disciplinary sanction that can be imposed on an individual. The imposition of such a measure, which negatively affects an individual's private life, requires the consideration of solid evidence relating to the individual's ethics, integrity and professional competence (compare *Xhoxhaj*, cited above, § 403).

87. As regards the applicant's argument that the Vetting Act in general did not set out a scale of sanctions and rules to ensure that the sanction of dismissal was applied in accordance with the principle of proportionality, the Court observes that Article Ë § 1 of the Annex to the Constitution and sections 58 and 66 of the Vetting Act indeed provide for only two types of disciplinary sanction: dismissal from office or suspension with the obligation to attend a training programme (see paragraph 41 above). It refers in this regard to its finding in *Xhoxhaj* (cited above, § 412) that, taking into account the exceptional circumstances which preceded the enactment of the Vetting Act, it is consistent with the spirit of the vetting process to have a more limited scale of sanctions in the event a person fails to satisfy one of the three evaluation criteria laid down in the Vetting Act. The Court must, however, examine whether in the particular circumstances of the applicant's case, the application of these provisions leading to the imposition of the most serious sanction was proportionate to the aims pursued.

88. The applicant's dismissal was based both on the evaluation of her assets and on that of her professional competence. As regards the evaluation of her assets, the Court notes at the outset that all the instances of insufficient disclosure of or failure to justify assets for the purposes of section 61(3) of the Vetting Act found by the SAC related exclusively to income earned by her spouse from employment abroad and not to her personal income. It

considers that in these circumstances, particular caution is necessary in the assessment of the proportionality of her dismissal.

89. The Court observes that the SAC considered that the applicant had made an insufficient disclosure of assets within the meaning of section 61(3) read in conjunction with section 33(5)(b) of the Vetting Act (see paragraphs 42 and 40 above) as she had failed to prove the lawfulness of the financial resources used to acquire part of the couple's real estate assets (see paragraphs 13-22 above). In the SAC's view, she had failed to prove the lawfulness of the following sources of income used to buy real estate: ALL 3,000,000 (approximately EUR 22,000 at the time) earned by her future husband as an emigrant in Greece from 1997 to 2000; EUR 12,000 earned by her husband in Saudi Arabia in 2003; and some USD 20,000 earned by her husband in Saudi Arabia in 2006.

90. As regards the irregularities relating to the ALL 3,000,000 earned by the applicant's future husband as an emigrant in Greece from 1997 to 2000, in the SAC's view, the applicant had neither submitted proof of his employment in Greece at that time nor of the exact amount of income generated from his work (see paragraphs 15-17 above). The Court observes in this regard that, unlike the IQC, the SAC took into account income which the applicant's future husband had earned some fifteen to twenty years before her declaration in the vetting proceedings at a time when he had not yet been married to her; the Court also considers it important that she had not yet been a prosecutor or other public official subject to asset declaration laws.

91. As to the irregularities relating to the EUR 12,000 earned by the applicant's husband in Saudi Arabia in 2003, in the SAC's view, there were indications about his employment in Saudi Arabia at the time. However, the applicant had not disclosed this income prior to her vetting declaration or proven that her husband had paid tax on it (see paragraph 18 above). The Court takes note of the fact that the applicant failed to declare this sum already in 2004 in her annual asset declaration, prior to disclosing it in her vetting declaration. It observes in this regard that this failure concerns the very first asset declaration of the applicant, who had only started practising as a prosecutor in October 2003. Having regard to the material before it, it further considers that there is nothing to indicate that the husband's income did not come from a lawful gainful activity.

92. As regards the irregularities relating to the money earned by the applicant's husband in Saudi Arabia in 2006 (some USD 20,000), the applicant provided credible evidence that he had been employed at the time in Saudi Arabia and declared the amount earned both in her annual asset declaration in 2006 and in her vetting declaration, but failed to provide documentary proof that he had paid income tax in Albania or Saudi Arabia (see paragraphs 19-21 above). The Court also notes with regard to this income that there is nothing to indicate that it did not come from a lawful gainful activity.

93. Having regard to the above findings, the Court observes that the applicant was dismissed as she was found to have had insufficient lawful resources to justify the acquisition of real estate. The assessment of the resources – exclusively her spouse's income – included income earned by him at a time when the applicant was neither married to him nor yet a prosecutor. The remaining resources were not considered lawful essentially as the applicant had been unable to prove that her husband had paid tax on his income from lawful employment abroad. The Court notes that, while potential tax evasion is a serious matter, for the purposes of the applicant's vetting proceedings it is of relevance that the amounts of spousal income on which tax was not proven to have been paid represented a relatively small percentage of the total amount of spousal income in the period under consideration, and that no irregularities were found in relation to the spousal income from domestic sources over several years.

94. As regards the evaluation of the applicant's professional competence, the only reproach the SAC had against her was the fact that she had missed a deadline for lodging an appeal in one case. While the SAC itself had considered this failure to be an isolated incident in the applicant's career, it nevertheless considered that, given that the case in question was related to the declaration of assets of a public official, her failure to lodge an appeal contributed to undermining public trust in the justice system, for the purposes of section 61(5) of the Vetting Act (see paragraphs 23-25 above). The Court does not underestimate in this regard the importance of the prosecution of alleged economic offences by public officials for maintaining public trust in the justice system. It observes, however, that, as noted above, in the SAC's view, the applicant's failure to lodge one appeal had been an isolated incident in her career as a prosecutor notably dealing with economic crimes. It has not been argued that the case in question, which involved a former local government official, was of a particularly high profile. The Court also takes note in this regard of the international observer's opinion that the appeal in question was to be filed owing to the general instructions for the lodging of prosecution appeals, but that it had not had any reasonable prospects of success (see paragraph 29 above).

95. The Court further takes note of the fact that both under domestic law (compare paragraphs 47-49 above) and according to European standards, including the European Guidelines on Ethics and Conduct for Public Prosecutors ("the Budapest Guidelines", see paragraph 51 above) as well as the subsequent Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, issued by the Council of Europe's Consultative Council of European Prosecutors (CCPE) (see paragraph 52 above), prosecutors are required to meet high standards of integrity in the conduct of their private matters out of office in order to maintain public confidence in the integrity of the justice system. It was therefore of importance for the applicant, as a prosecutor responsible for the prosecution of, *inter alia*, tax

offences, to prove that members of her immediate family had complied with the applicable tax legislation. The Court cannot overlook that a less severe form of disciplinary liability, outside the vetting process, could have been properly considered in such a case. Furthermore, any indications of tax evasion could have been investigated by the relevant authorities. Nevertheless, the concrete circumstances of the case must be taken into account in order to assess the proportionality of the most serious sanction, dismissal from office. In the applicant's case, that particular sanction, under the Status of Judges and Prosecutors Act, entailed a lifetime ban on re-entering the justice system (compare *Xhoxhaj*, cited above, §§ 413, 245 and 206-07).

96. In view of the foregoing, the Court considers that, on the basis of an overall assessment of the particular circumstances of the case, the applicant's dismissal, based essentially on the fact that she was unable to prove that her husband had paid tax on some of his income from lawful activities in the previous two decades and in the absence of any indications of bad faith or deliberate violations by the applicant herself, was disproportionate to the legitimate aims pursued by the vetting process.

97. There has accordingly been a violation of Article 8 of the Convention as regards the applicant's dismissal from office.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

98. The applicant complained that the vetting proceedings resulting in her removal from her post as a prosecutor had been unfair. She argued that her case had not been determined by a "tribunal established by law" owing to the ineligibility of one or more members of the SAC, that the SAC adjudicating her case had lacked independence and impartiality and that serious procedural shortcomings had affected the fairness of the proceedings. She relied on Article 6 of the Convention, the relevant part of which reads as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

A. Applicability of Article 6

99. The Government conceded that Article 6 § 1 of the Convention was applicable under its civil head to the vetting proceedings. The applicant considered that Article 6 applied both under its civil and under its criminal head to those proceedings.

100. The Court found in *Xhoxhaj* (cited above) that Article 6 was applicable to the vetting proceedings introduced in Albania in 2016 under its civil head (ibid., §§ 236-39 and 288), but not under its criminal head (ibid.,

§§ 240-46). It sees no reason to reach a different conclusion in the present case.

B. Complaint regarding the determination of rights by a "tribunal established by law"

1. The parties' submissions

101. The Government submitted that the applicant's complaint alleging the ineligibility of several judges of the SAC for the office of judge and thus the lack of a "tribunal established by law" should be rejected for non-exhaustion of domestic remedies in accordance with Article 35 § 1 of the Convention. They submitted that she had failed to raise any objection about the composition of the SAC during the proceedings before that chamber and therefore had not given the domestic courts an opportunity to rectify any potential error.

102. The Government argued that under section 27 of the Vetting Act (see paragraph 43 above), the applicant had had the possibility of objecting to the participation in the proceedings of judges who were in a situation of conflicts of interest or unable to assume office owing to specific prohibitions. Under section 27(2) of the Vetting Act, another panel of the SAC was to decide on the objection. They further argued that another person subject to vetting proceedings had lodged a criminal complaint against one of the judges of the SAC, L.D., who had been suspended from office by the SAC after being charged with forgery of documents (see paragraph 34 above).

103. The applicant submitted that she had not had any effective remedy at her disposal to challenge the composition of the SAC in the course of the vetting proceedings. The decisions of the SAC were final. It had been discovered only some three months after its decision to dismiss her that two or more judges of the SAC had not been eligible to serve as its judges. One of the judges, L.D., had subsequently been found guilty of intentionally concealing the fact leading to his ineligibility, namely that he had been dismissed from office as a judge by the High Council of the Judiciary in 1997. He had further been disqualified from running for another judicial position by the High Council of the Judiciary in late 2016.

104. The applicant further submitted that there had been no effective remedy to challenge the failure by SAC members to comply with the eligibility criteria. Another person subject to vetting proceedings had challenged the participation of Judges L.D. and A.H. in his case as they had failed to meet the eligibility criteria to be members of the SAC. The SAC had, however, found that questions concerning the mandate of these judges fell outside its jurisdiction under the applicable constitutional provisions. That person's constitutional complaint had also been to no avail (see paragraphs 44-45 above). Her requests for disciplinary proceedings to be opened against Judges L.D. and A.H. and their removal from office on

grounds of ineligibility both with the SAC and the IMO once she had become aware of issues leading to their ineligibility had also been to no avail (see paragraphs 32-33 above).

2. The Court's assessment

105. The Court reiterates that it is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. The Court should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined in the Convention are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014).

106. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others*, § 65, and *Vučković and Others*, § 70, both cited above).

107. Mere doubts on the part of the applicant regarding the effectiveness of a particular remedy will not absolve him or her from the obligation to try it (see *Milošević v. the Netherlands* (dec.), no. 77631/01, 19 March 2002; *Vučković and Others*, cited above, §§ 74 and 84; and *Zihni v. Turkey* (dec.), no. 59061/16, §§ 23 and 30, 29 November 2016). This holds true, in particular, in a context in which the effectiveness of a remedy has not yet or only rarely been tested before the domestic courts and in which the Court has considered that applicants had to exhaust remedies which were accessible and offered reasonable prospects of success (compare *Zihni*, cited above, §§ 24-31). In a legal system providing protection by the Constitution or law for fundamental rights, it is incumbent on the aggrieved individual to test the extent of that protection and to allow the domestic courts to develop those rights by way of interpretation (compare *A, B and C v. Ireland* [GC], no. 25579/05, § 142, ECHR 2010; see also *Vučković and Others*, § 84, and *Zihni*, § 30, both cited above).

108. With respect to final judgments delivered by national courts, the Court has repeatedly held that a request for reopening of proceedings on the basis of new evidence is not an effective remedy for the purposes of complying with the admissibility criteria under Article 35 § 1 of the Convention (see *Vainio v. Finland* (dec.), no. 62123/09, 3 May 2011; *Riedl-*

Riedenstein and Others v. Germany (dec.), no. 48662/99, 22 January 2002; and *Dinchev v. Bulgaria* (dec.), no. 17220/09, § 27, 21 November 2017). However, the Court has also held that, in certain exceptional situations, extraordinary remedies should be resorted to, for example where the quashing of a judgment that has acquired legal force is the only means by which the respondent State can put matters right through its own legal system (see *Kiiskinen and Kovalainen v. Finland* (dec.), no. 26323/95, 1 June 1999, where the complaint before the Court concerned the impartiality of a judge and it could not have been made before the end of the domestic proceedings; and *Nikula v. Finland* (dec.), no. 31611/96, 30 November 2000). Similarly, under specific circumstances, the Court has held that a request for reopening of proceedings could be the only means whereby the specific complaint could be raised before the domestic courts and under such circumstances it would constitute an effective remedy (see *Sobczyk v. Poland* (dec.), no. 73446/10, §§ 40 and 48, 25 August 2015, and *Dinchev*, cited above, § 28).

109. The Court observes that it is uncontested that the applicant did not raise her complaint that one or more of the judges of the SAC did not meet the eligibility criteria to serve as judges of that chamber in the vetting proceedings before that chamber. It notes in that regard that the Constitutional Court, in its decision of 29 April 2020 in the case of *Besnik Cani* (see paragraphs 44-45 above), subsequently confirmed that the constitutional right to a "tribunal established by law" was to be guaranteed by the SAC in the course of the proceedings before it (ibid., §§ 21 and 24). It further observes that sometime after the SAC's decision in her case the SAC suspended Judge L.D. from office when criminal proceedings had been instituted against him for forgery of documents relating to his application for the SAC position, following a criminal complaint by another person being vetted (see paragraph 34 above).

110. The Court notes that a party to a judicial process who has doubts about the lawfulness of the appointment of a judge participating in the hearing of his or her case, which could adversely affect the "established by law" quality of that tribunal, will generally be expected to raise those questions before the trial court and/or pursue any other effective remedies provided by national law while the underlying proceedings are still pending (compare the facts in *Besnik Cani*, cited above, §§ 35-42). The facts relied on by the present applicant in relation to L.D.'s fitness to serve as a SAC judge, and in particular his prior dismissal from judicial office, were a matter of public record. The applicant has made references to decisions of the High Council of the Judiciary dismissing L.D. from office in 1997 and also disqualifying him from running for another judicial position in late 2016, documents that she obtained within a few months following her dismissal in the vetting proceedings. Members of the parliamentary commission reviewing L.D.'s application for the SAC position had also raised questions during the parliamentary hearing about his prior background (see *Besnik Cani*, cited

above, § 13). In these circumstances, the applicant has not shown convincingly that she could not have been aware during her vetting proceedings of the key facts related to L.D.'s prior departure from the judiciary.

111. Moreover, as an additional consideration, the applicant did not file, upon obtaining knowledge of the doubts related to L.D.'s fitness for office, a request for exceptional revision (rishikim) of the final SAC judgment in her case on the basis of newly discovered facts, or any other ground foreseen under Article 494 of the Code of Civil Procedure (see paragraph 46 above and *Besnik Cani*, cited above, §§ 148-49). This would have given the applicant an opportunity to make submissions before the SAC on the discovery of any fresh and decisive evidence and her diligence in this respect (namely, that such facts "could not have been known by the party during the consideration of the case"), and to the SAC an opportunity to consider those submissions.

112. The Court does not overlook the fact that since the question of challenges to the eligibility of judges of the SAC was a novel issue in the vetting proceedings, there was not yet any well-established domestic case-law on which remedy or remedies an applicant could use in that regard. Furthermore, the Court recalls its findings in the case of *Besnik Cani* (cited above, §§ 35-36) that the SAC declared itself not competent to rule on that applicant's complaint – brought after the SAC decision dismissing the present applicant from her position had become final – that L.D.'s mandate should be terminated due to his unfitness for the SAC office. However, the Court considers that these subsequent developments, of which the applicant was not aware at the relevant time, did not exempt her from the duty to raise the relevant questions either during her own vetting proceedings or, had that not been objectively possible despite her due diligence, through the initiation of proceedings for the revision of the final SAC judgment. The Court cannot rule out, in this respect, that following the decision of the Constitutional Court of 29 April 2020 (see paragraphs 44-45 above), the SAC might have reconsidered, if invited to do so in formal proceedings, its prior position on its lack of competence to hear challenges against one of its own members' fitness for judicial office. The applicant did not, ultimately, use any domestic remedy aimed at guaranteeing her right to have her vetting proceedings determined by a "tribunal established by law". She did not flag in any way during the proceedings before the SAC that she objected to its composition, under the ordinary rules of civil procedure or any other grounds (compare the facts in *Besnik Cani*, cited above, §§ 35-39). The Court further considers that the information requests filed and the disciplinary proceedings requested by the applicant against the judges concerned after the termination of the vetting proceedings against her by a final decision were not an effective remedy to ensure that her case would be decided by a "tribunal established by law".

113. In these circumstances, the Government's objection must be allowed and this part of the application dismissed for non-exhaustion of domestic remedies under Article 35 §§ 1 and 4 of the Convention.

C. Complaints regarding the independence and impartiality of the SAC

114. The Government submitted that the applicant had not complained of a lack of independence and impartiality of the SAC deciding on her case in the proceedings before that court and thus had not exhausted domestic remedies in this regard for the purposes of Article 35. They further submitted that, in any event, having regard to the manner of election, composition and procedural guarantees, the SAC met the requirements of an independent and impartial tribunal. Most of its members, elected as judges at Constitutional Court level by the Albanian Parliament, had exercised judicial functions in the past.

115. The applicant submitted that the SAC lacked independence and impartiality essentially for three reasons: Firstly, there was no substantial representation of judges in the SAC and its members were thus not sufficiently qualified to handle complex vetting proceedings. Secondly, as to the appointment process, the SAC was composed of members selected by an ad hoc parliamentary body and appointed by Parliament, without the involvement of the judiciary, and were thus exposed to political pressure. Thirdly, there was confusion between the vetting bodies' role in the investigations and their role in the subsequent decision on the merits of the charges, which prompted objectively justified fears as to the SAC's impartiality.

116. The third-party intervener, Res Publica, also considered that the members of the vetting bodies did not all have the judicial training and experience necessary to deal with highly complex disciplinary proceedings against judges.

117. In its leading judgment in the case of *Xhoxhaj* (cited above), the Court concluded, first, that the non-representation of serving judges in the SAC, taking into account the extraordinary nature of the vetting proceedings precisely targeting all serving judges and prosecutors in order to combat corruption, as well as the statutory safeguards for the independence of the members of the SAC, did not disclose a lack of independence on the part of that chamber (see *Xhoxhaj*, cited above, §§ 314 and 316, read in conjunction with §§ 299-300). Secondly, it concluded that it had no reason in general to doubt the independence of the vetting bodies owing to the manner of appointment of their members, namely their election by Parliament (ibid., §§ 311 and 295-96). Thirdly, the Court concluded that, having regard to the functioning of the vetting proceedings, there was no confusion between the vetting bodies' (and particularly the IQC's) obligation to open the

investigation and their duty to take a decision on the vetted person's disciplinary liability, and thus no objectively justified fears as to the vetting bodies' impartiality (see *Xhoxhaj*, cited above, §§ 315 and 305-308).

118. Having regard to these findings, the circumstances of the applicant's case and her submissions, which are comparable to those made in the case of *Xhoxhaj*, the Court, even assuming the exhaustion of domestic remedies in this regard, considers that there is no appearance of a lack of independence and impartiality on the part of the SAC in the applicant's case.

119. It follows that this part of the application must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D. Complaint regarding the time and facilities to present the case

120. The applicant further complained that there had been serious procedural shortcomings in the vetting proceedings against her. In particular, she had not been afforded sufficient opportunity and time to present her case and evidence before the SAC to challenge her dismissal.

121. The Government contested that view. They submitted, in particular, that the applicant had had the opportunity to present her case, name witnesses or experts and submit new evidence in the hearings before the SAC. She had not asked for additional time or a postponement of the hearing to present her arguments.

122. The Court observes in this regard that following the Public Commissioner's appeal against the IQC's decision, the applicant was granted access to the case file and had the opportunity to make submissions and present evidence during the public hearings held by the SAC (see paragraph 12 above). Having regard to the material before it, the Court sees no indication that she lacked time and facilities to properly present her arguments.

123. It follows that this part of the application must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

E. Complaint relating to the application of domestic law

124. The applicant also complained that the SAC had applied domestic law in a blatantly erroneous manner. The Government contested that view.

125. The Court reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. Its role is to verify whether the effects of such interpretation are compatible with the Convention. That being so, save in the event of evident arbitrariness, it is not the Court's role to question the interpretation of the domestic law by the

national courts (see *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, §§ 49-50, 20 October 2011, with further references, and *Anđelković v. Serbia*, no. 1401/08, § 24, 9 April 2013).

126. The Court observes that, while it has found that the application of the vetting laws by the domestic courts in the circumstances of this case did lead to a breach of Article 8 of the Convention (see paragraphs 83-97 above), that application cannot be considered evidently arbitrary.

127. It follows that this part of the application must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

F. Complaint relating to the burden of proof

128. The applicant further complained that the burden of proof placed on her in the vetting proceedings had been unreasonable.

129. The Government contested that view.

130. As to the applicant's complaint relating to the burden of proof placed on her, the Court reiterates that Article 6 of the Convention does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). It is for the national courts to assess the relevance of proposed evidence, its probative value and the burden of proof (see *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 198; *Lady S.R.L. v. the Republic of Moldova*, no. 39804/06, § 27, 23 October 2018; and *Xhoxhaj*, cited above, § 325). It further refers to its findings in the case of *Xhoxhaj* that in general, the rules of the burden of proof in the proceedings under the Vetting Act, including the lack of strict temporal limits for the evaluation of assets, do not disclose a breach of Article 6 under the aspect of the principle of legal certainty, but that the implication of these provisions for legal certainty and an applicant's rights under Article 6 § 1 should be considered on a case-by-case basis (ibid., §§ 348-53).

131. In the present case, the Court notes that the events related to the applicant's future spouse's employment in Greece did in fact go back a significant period. However, they were considered proven at least to some extent. With respect to the lawfulness of the spouse's income from two periods of employment in Saudi Arabia, it cannot be considered excessive that the applicant, as an experienced financial crimes prosecutor, was expected to show that income tax had been paid at the relevant time in compliance with Albanian tax laws, either at the place of origin (Saudi Arabia), in Albania or a combination of both – by having preserved the original documentation or obtaining fresh certifications of prior tax payments. In any event, it was open to the applicant to argue, under the Vetting Act, that it had been objectively impossible to obtain such evidence,

e.g. because official records had been destroyed in the meantime. The SAC was not persuaded that the applicant had met this burden, and the Court finds no reason to dispute that domestic finding.

132. It follows that this part of the application must equally be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

133. The applicant complained that she had not had an effective remedy at her disposal in respect of her complaints under Article 6 § 1 and Article 8 of the Convention. She relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

134. The Government took the view that the applicant had had an effective remedy for the purposes of Article 13 to raise her complaints under Articles 6 and 8. She had been able to submit these complaints first to the IQC and then to the SAC.

135. The applicant argued that she had not had an effective remedy to challenge the breach of her fundamental rights in the vetting proceedings, within the meaning of Article 13, read in conjunction with Articles 6 and 8 of the Convention, because she could not challenge her dismissal before the domestic courts or lodge a constitutional complaint against the judgment of the SAC.

136. Even assuming that the applicant had an "arguable claim", for the purposes of Article 13 of the Convention, in all respects, the Court reiterates that the "authority" referred to in Article 13 does not in all instances need to be a judicial authority in the strict sense (see *Rotaru v. Romania* [GC], no. 28341/95, § 69, ECHR 2000-V, and *Driza v. Albania*, no. 33771/02, § 116, ECHR 2007-V (extracts)). In any event, as it concluded in the case of *Xhoxhaj* (cited above, § 288), both the IQC and the SAC, a special chamber of the Constitutional Court, were "tribunals" for the purposes of Article 6. The applicant was in a position to raise her complaint relating to Articles 6 and 8 before these vetting bodies.

137. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4.

V. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

138. The relevant parts of Article 46 of the Convention provide:

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

..."

139. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Indication of general and individual measures

140. The applicant considered, by reference to Article 46 § 1 of the Convention, that the respondent State should be ordered to remedy the fundamental inadequacies in the domestic vetting legislation and to secure her reinstatement as prosecutor and member of the HPC.

141. The Government argued that the legal provisions on vetting were in compliance with the Convention. Moreover, they submitted that since the applicant had failed to fulfil her obligations under the Vetting Act, which were also grounds for initiating disciplinary proceedings against her, she could not be reinstated.

142. The general principles regarding the respondent State's obligations under Article 46 of the Convention in the context of the execution of judgments in which the Court found a breach of the Convention are laid down, *inter alia*, in the Court's judgment in *Oleksandr Volkov* (cited above, §§ 193-95, with many further references). The Court's judgments are essentially declaratory in nature. Article 46 notably comprises a legal obligation to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (ibid.).

143. The Court observes that it has found a breach of the applicant's right to respect for her private life under Article 8 of the Convention on account of her dismissal because, in the specific circumstances of her case, that dismissal was not proportionate to the legitimate aims pursued. It does not, however, consider that the functioning of the current vetting process in Albania in general, based on the Constitution and the Vetting Act, discloses as such any systemic problems of compliance with the requirements of the Convention (see already *Xhoxhaj*, cited above, §§ 230 et seq.). It does not therefore consider it necessary to exceptionally indicate itself any general measures that may be taken to put an end to the violation in question (compare, *a contrario*, *Oleksandr Volkov*, cited above, §§ 199-202).

144. As to what individual measures would be the most appropriate to put an end to the violation found in the present case, the Court reiterates that, in many cases where the domestic proceedings were found to be in breach of the Convention, it has held that the most appropriate form of reparation for the violations found could be the reopening of the domestic proceedings (compare, for example, *Oleksandr Volkov*, cited above, §§ 205-206, concerning a breach of both Articles 6 and 8).

145. Referring to its findings in *Besnik Cani* (cited above, § 149), the Court notes that there might be a legal avenue for the applicant to seek the reopening of the proceedings following the Court's finding of a breach of the Convention. Accordingly, given the circumstances of the present case and to the extent that that might be possible under domestic law, an appropriate form of redress for the violation of the applicant's right to respect for her private life under Article 8 of the Convention would be to reopen the proceedings, should the applicant request such reopening, and to re-examine the case in a manner that is in keeping with the requirements of Article 8 of the Convention as set out in this judgment.

B. Damage

146. The applicant claimed, in respect of pecuniary damage, the sums corresponding to the loss of her salary as a prosecutor during the period from her dismissal on 28 February 2019 until her reinstatement, her gross monthly salary amounting to ALL 281,078 (approximately 2,267 euros (EUR)). In the event that she was not reinstated, she claimed the amount corresponding to the salary she would have earned up to retirement age and the amount corresponding to her retirement pension. She further claimed that this amount should be adjusted according to the rate of inflation and that interest and payable taxes should be added.

147. The applicant further claimed EUR 150,000, plus any tax that may be chargeable, in respect of non-pecuniary damage caused by the anxiety, loss of reputation and opportunities she had suffered as a result of her abrupt dismissal at the peak of her legal career as a prosecutor.

148. The Government submitted that the applicant could not claim any compensation for loss of salary as her dismissal had not been in breach of the Convention. They further submitted that her claim for compensation in respect of non-pecuniary damage was excessive and unsubstantiated.

149. The Court observes that the applicant started practising as a lawyer shortly after her dismissal; however, the abrupt transition to that new line of work under the circumstances must have caused some pecuniary loss. Making an assessment on the basis of equity and in the light of all the information in its possession, the Court considers it reasonable to award the applicant EUR 13,600 for pecuniary damage, plus any tax that may be chargeable to the applicant on that amount. It also considers that the applicant must have

sustained non-pecuniary damage which the finding of a violation of the Convention in this judgment does not suffice to remedy and awards her EUR 6,000 (six thousand euros), plus any tax that may be chargeable, under this head.

C. Costs and expenses

150. Submitting documentary evidence, the applicant also claimed EUR 5,155 (including taxes) for the costs and expenses incurred before the Court.

151. The Government submitted that, even assuming that there had been a breach of the Convention, the costs and expenses claimed by the applicant were not necessary as to quantum, having regard to the usual costs and expenses of a lawyer practising in Albania.

152. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 5,000 (including taxes) for the proceedings before the Court.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 8 of the Convention concerning the applicant's dismissal admissible;

2. *Declares*, by a majority, the remainder of the application inadmissible;

3. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention in respect of the applicant's dismissal;

4. *Holds*, unanimously,
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 13,600 (thirteen thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of pecuniary damage;
      (ii) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 5,000 (five thousand euros) in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

P.P.V.
M.B.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. I agree with point 1 of the operative provisions of the judgment holding that the complaint under Article 8 of the Convention concerning the applicant's dismissal from office as a prosecutor is admissible, and I also agree with point 3 of the operative provisions to the effect that there has been a violation of Article 8 of the Convention in respect of the applicant's dismissal. In addition, I agree with point 4 of the operative provisions regarding the awards in respect of pecuniary and non-pecuniary damage and costs and expenses, and with point 5 of the operative provisions regarding the dismissal of the remainder of the applicant's claim for just satisfaction.

2. I disagree, however, with point 2 of the operative provisions of the judgment to the effect that the remainder of the application is inadmissible. In particular, I am of the view that the complaint under Article 6 of the Convention is not only admissible, but that there has also been a violation of this Article in that the vetting proceedings resulting in the applicant's removal from her post as prosecutor were not fair within the meaning of Article 6 § 1.

3. This opinion takes the form of a statement of disagreement with the judgment (a "bare statement of dissent"), as regards point 2 of its operative provisions (concerning the complaint under Article 6 of the Convention), and therefore does not take the form of a fully-fledged separate opinion or the form of a simple anonymous vote against these points. A mere statement of disagreement with the judgment or part of it is an alternative choice provided by Rule 74 § 2 of the Rules of Court for judges who wish to dissent. This choice is particularly suitable for me to follow in the present case, given that I already expressed my views in two rather similar or relevant applications against Albania (see, *mutatis mutandis*, my approach in my dissenting opinion in *Xhoxhaj v. Albania*, no. 15227/19, 9 February 2021, and my partly concurring and partly dissenting opinion in *Besnik Cani v. Albania,* no. 37474/20, 4 October 2022 (not yet final)).