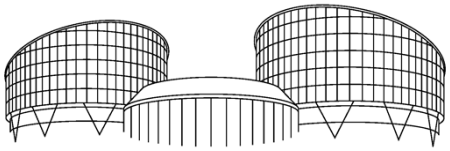

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF THANZA v. ALBANIA

(Application no. 41047/19)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Dismissal of Supreme Court judge based on findings of vetting proceedings • Inadequate opportunity to oppose factual findings in relation to background assessment and plead his case in an effective manner • Excessively formalistic application of relevant national law requirements in respect of integrity background assessment into possible links to organised crime • No issue as regards part of proceedings on asset and financial integrity evaluation
Art 8 • Private life • Justified dismissal based on individualised findings from assets and financial integrity evaluation • Vetting bodies' factual findings and interpretation of domestic law not arbitrary or manifestly unreasonable • No serious shortcomings in decision-making process • Relevant and sufficient reasons

STRASBOURG

4 July 2023

FINAL

04/10/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Thanza v. Albania,

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

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Georgios A. Serghides,
Darian Pavli,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 41047/19) 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, Mr Admir Thanza ("the applicant"), on 29 July 2019;

the decision to give notice to the Albanian Government ("the Government") of the complaints under Articles 6, 8 and 13 of the Convention and to declare inadmissible the remainder of the application;

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

Having deliberated in private on 6 June 2023,

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

INTRODUCTION

1. The present case concerns the outcome of re-evaluation proceedings (otherwise referred to as "vetting") against the applicant, which resulted in his dismissal from the post of judge of the Supreme Court.

THE FACTS

2. The applicant was born in 1969 and lives in Tirana. He was represented by Mr A. Saccucci and Ms G. Borgna, lawyers practising in Rome.

3. The Government were initially represented by their Agent, Ms E. Muçaj, and subsequently by Mr O. Moçka, General State Advocate.

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

I. BACKGROUND INFORMATION

5. The applicant served as a judge at the Shkodër District Court from 1992 to 2006 and as its President for several years; a judge at the Tirana District Court from 2006 to 2009; a member of the Constitutional Court of Albania

from 2009 to 2013; and a judge at the Supreme Court of Albania from 2013 until his dismissal from office in vetting proceedings (see paragraph 34 below).

6. In accordance with the Assets Disclosure Act (Law no. 9049 of 10 April 2003), the applicant submitted annual declarations of assets to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest ("HIDAACI", see paragraph 68 below). It appears that HIDAACI found no inconsistencies or inaccuracies in any of his declarations over the years, until his vetting declaration of assets filed in 2017 (see paragraph 11 below). When the applicant was appointed to the Constitutional Court in 2009 and then to the Supreme Court in 2013, he was subjected to a background assessment by the Classified Information Security Directorate ("the CISD"), which he passed.

7. S.B. was detained on suspicion of abuse of office (Article 248 of the Criminal Code). His wife (L.H.) had her telephone communications intercepted. On 31 January and 4 February 2016 the applicant met with L.H., a long-time friend of his family who, according to him, was a notary public with no criminal record. On 8 April 2016 an investigation was opened against them under Articles 244 and 259 of the Criminal Code (active corruption of persons exercising public functions and passive corruption by persons exercising public functions). By a decision of 29 July 2016, the Prosecutor General's Office discontinued the investigation for lack of a criminal offence, referring to Article 328 § 1 (b) of the Code of Criminal Procedure ("the act does not constitute a criminal offence"; see paragraph 66 below). It was stated in the discontinuation decision that "the relationship [with L.H.] [was] social and [that there were] no corruptive interests involved". Although the discontinuation decision could be challenged before the Supreme Court, it appears that no appeal was lodged.

8. In the meantime, in April 2016 the applicant submitted a self-declaration form in accordance with the new Decriminalisation Act (Law no. 138/2015 "On ensuring the integrity of persons exercising, elected or appointed to public functions") declaring the absence of grounds, such as a prior criminal record for serious offences, preventing him from being appointed to or serving in public office (see paragraph 71 below). The self-declaration form was adopted by a further parliamentary decision following the enactment of that Act. The applicant indicated "no" when replying to questions asking whether he had been investigated, tried or convicted in Albania or another country (see paragraph 72 below).

9. In 2016 Albania embarked on comprehensive justice system reforms, amending the Constitution and enacting a number of statutes relating to, among other things, the transitional re-evaluation of all serving judges (hereinafter "the vetting process", see *Xhoxhaj v. Albania*, no. 15227/19, §§ 4-7, 9 February 2021). The vetting process was to be carried out by the Independent Qualification Commission ("the IQC") at first instance and – in

the event of an appeal – the Special Appeal Chamber ("the SAC") attached to the Constitutional Court (jointly referred to as "the vetting bodies"). The vetting bodies were to re-evaluate each serving judge under three criteria: (i) an evaluation of assets (hereinafter also referred to as "assets assessment"); (ii) an integrity background check aimed at determining any possible links to organised crime (hereinafter also referred to as "background assessment"); and (iii) an evaluation of professional competence. At the conclusion of each set of re-evaluation proceedings, the vetting bodies were to give a reasoned decision confirming in office or suspending or dismissing from office the person being vetted.

II. VETTING PROCEEDINGS IN RESPECT OF THE APPLICANT

10. As a judge of the Supreme Court, the applicant was subject to the vetting process as a matter of priority. In January 2017 he filled in and submitted the following standard declaration forms: a vetting declaration of assets, an integrity background declaration and a professional self-appraisal form. In his vetting declaration of assets, the applicant declared, *inter alia*, a flat of 149 sq. m. in Tirana, acquired in 2009 for 112,000 euros (EUR) primarily with the proceeds from the sale of another flat in Tirana and his and his wife's work-related income. He also declared a flat of 136 sq. m. with a garage in Shkodër, acquired in April 2000 with work-related income and the proceeds from the sales of two flats in November 2000. The applicant replied negatively to the questions in the integrity background declaration form (see paragraph 64 below).

A. Submissions by other public authorities

11. HIDAACI considered that the applicant's vetting declaration of assets was inaccurate and not in accordance with the law; that there were no legitimate financial resources to justify the assets; that the applicant had concealed assets and made a false statement; and that he was not in a situation of conflict of interest.

12. Pursuant to section 39 of the Vetting Act (see paragraph 63 below), on 2 November 2017 the CISD sent a letter to the IQC. It reads as follows:

> "Subject: Delivery of the report [*dërgohet raporti*] on the [applicant's] background check
>
> To: IQC
>
> Pursuant to section 39 of [the Vetting Act], after completion by the working group of the background check procedure for [the applicant], the CISD informs you as follows.
>
> 1. Referring to [the applicant's] background declaration, we carefully reviewed his file [*dosjen*] and wrote to SHISH (the State Intelligence Service), SHÇBA (the Internal Affairs and Complaints Service of the Ministry of the Interior) and the Prosecutor General's Office, to carry out the background check procedure.

a. The declaration was complete and filled out in conformity with the Vetting Act. After a discussion by the working group's members, it was decided to request verification of background by those authorities.

2. ... According to the Prosecutor General's Office's 'confidential' letter of 8 September 2017, SHISH's 'secret' letter of 25 October 2017 and SHÇBA's 'confidential' letter of 22 August 2017:

...

b. Having regard to Article DH § 4 of the Annex to the Constitution, [the applicant] inaccurately completed the declaration form by failing to declare proceedings under Articles 244 and 259 of the Criminal Code ... discontinued on 29 July 2016.

c. Information has been obtained giving rise to a reasonable suspicion [*dyshime të arsyeshme*] of his involvement or inappropriate contact with persons [*për kontakte të papërshtatshme me persona*] involved in organised crime.

3. Based on an evaluation of all the information available to the verification authorities about [the applicant], we consider as follows.

Under section 39(2) of [the Vetting Act], he made inaccurate statements in the declaration form, specifically in point ç, part 5, 'Data about security', by not declaring his inappropriate contact with persons [*kontaktet e papërshtatshme me personat*] involved in organised crime. That non-declaration results in liability for concealment of a fact, incorrect and untrue completion of the declaration form.

After [the discontinuation decision] in 2016 on the judge's involvement in corruption-related activity in the form of bribery for taking or omitting to take action in relation to his judicial function, [the applicant] is considered a person with an inclination towards criminal activities and a person who may be easily put under pressure by criminal structures [*strukturat kriminale*]; an evaluation based on section 37(b) and (c) of [the Vetting Act].

In addition, under section 3(8) of the Act, which refers to criminal acts under Article 75/a of the Criminal Procedure Code, [the applicant] is involved in unlawful activities, revealed in the form of corruption.

Under section 38(4) of the Act, there is information that he has had inappropriate contact.

Based on the analysis of the above-mentioned decision, we have established that [there has been] inappropriate contact with person(s) [*një kontakt i papërshtatshëm me person/persona*] involved in organised crime, within the meaning of section 3(15) of the Act.

4. It follows that the working group has ascertained the inappropriateness of [the applicant's] continuation in office.

Please find attached the report [*raporti*] on [the applicant's] re-evaluation and [the discontinuation decision] of 2016."

13. The High Council of Justice ("the HCJ") identified certain shortcomings with respect to the applicant's professional competence in its assessment of his judicial work, such as the absence of a rapporteur's report, the absence of a date or signature on advisors' reports and the absence of certain data from hearing listings. The HCJ was nevertheless in favour of confirming the applicant in his post.

14. The Prosecutor General's Office informed the IQC that it had no information or indications from the law-enforcement agencies of the applicant's involvement in a criminal offence or as to his background check (*cënim të figurës së tij*). Moreover, the classified-information registers since 2012 had contained no data or indications from the law-enforcement agencies of investigations against him. The prosecutor's office attached to the Shkodër District Court informed the IQC that no disciplinary proceedings had been initiated against him and that they had no information of his involvement or contact with members of criminal organisations, convicted persons or persons suspected of criminal offences.

B. Proceedings before the IQC

1. Investigation by the IQC

15. The IQC carried out an administrative investigation based on the three re-evaluation criteria. The IQC wrote to the CISD, requesting "the complete declassification of the information classified as 'State secret' and sent with the letter of 2 November 2017". A copy of that letter (see paragraph 12 above) submitted by the parties to the Court was stamped "fully declassified [*deklasifikuar plotësisht*] on 1 March 2018".

16. In March 2018 the IQC invited the applicant to answer some additional questions, one of which read as follows: "Have you ever been detained, investigated, prosecuted, accused or convicted in Albania or a foreign country?". He replied, providing a detailed account regarding the corruption investigation in 2016 (see paragraph 7 above). He was also asked whether he knew seven named individuals, and whether he had ever conducted professional actions or consultations, or made decisions or contributed to decision-making concerning those individuals or their family members or indirectly to any entity where they could have been or were administrators, owners or partners, managers or had other interests; and whether he had had voluntary personal contact with people involved in civil, criminal or administrative proceedings beyond formal (official) communications. The applicant replied, mentioning his friendship with L.H. in relation to the last question.

17. On 28 May 2018 the applicant received the findings of the IQC's investigation, which stated, *inter alia*, as follows.

(a) As to the flat of 136 sq. m. in Shkodër, its declared price of 3,000,000 Albanian leks (ALL) did not match the price of ALL 1,200,000 (approximately EUR 9,000) stated in the purchase contract. The latter price did not seem to reflect the real value of a newly built flat purchased from the developer, being several times lower than the average market price in 2000 in Shkodër. Furthermore, the amount indicated as additional expenses for the flat had not been substantiated, and the proceeds from the sales in November 2000 could not have been used to purchase this flat in April 2000. As to the

flat in Tirana, the amount of ALL 4,000,000 declared in the 2003 declaration of assets did not match the price of ALL 1,950,000 in the purchase contract. A financial analysis of the periodic declarations over the years revealed a discrepancy between the declared income and the documentary evidence, and between net income and expenses incurred by the applicant's family. There was a negative balance for 2003-05, 2007, 2008 and 2016, and there had therefore been no possibility of making deposits, savings or of affording expenses such as property acquisitions during those periods. For the above-mentioned financial analysis, the IQC enclosed various tables and calculations and indicated that the methodology used was reflected in the attached submissions.

(b) The findings concerning the second component of the vetting process (the background assessment) stated that the CISD had carried out an investigation on the basis of statements and other data (*të verifikimit të dekiarimeve dhe të dhënave të tjera*) and recounted its submission of 2 November 2017 (see paragraph 12 above).

18. On 6 June 2018 the applicant sought access to the documentation and methodology used for calculating living expenses and the liquid assets for 2003-08. He was provided with the material in the case file, including the submissions of the CISD, HIDAACI and the HCJ (see paragraphs 12-13 above) as well as, it appears, letters from the tax authorities on which the calculations were based, and the methodology used for calculating the living expenses and liquid assets. On 8 June 2018 the applicant sought a ten-day extension of the time-limit for making submissions. On 11 June 2018 the IQC set a new deadline of 22 June 2018.

19. On 22 June 2018 the applicant submitted observations and documents, such as an expert report on his family's financial situation in 1992-2002, with a view to proving that he had had sufficient income and savings to justify the assets. He also stated that the only document attached to the CISD's submission was the 2016 discontinuation decision and that it was reasonable to conclude that it was based on that document and no other evidence.

20. On 28 June 2018 the applicant was informed that a hearing was listed for 4 July 2018. On 3 July 2018 the IQC informed him that it had considered the financial data for 1992-2002 and provided him with an amended financial assessment and the methodology for it. The latter indicated that the estimate of living expenses was based on HIDAACI's data (the amount calculated for the entire period, in proportion to the years for which there was an obligation to declare, to determine the average annual spending). The IQC rescheduled the hearing to 10 July 2018. The applicant was informed that he could make written submissions by 6 July 2018.

2. Decision by the IQC

21. The applicant and his lawyer made written and oral submissions and adduced evidence at the hearing on 10 July 2018. Those were admitted to the

file for consideration by the IQC panel. By a decision of 17 July 2018, the IQC dismissed the applicant from office and made the following findings.

(a) Evaluation of assets

(i) Flats and garages in Shkodër and Tirana

22. In his first declaration of assets for 2003, submitted in March 2004, and vetting declaration of assets submitted in 2017, the applicant had declared a flat of 136 sq. m. in Shkodër acquired with his family in April 2000, with a declared value of ALL 3,000,000, the applicant and his wife owning a 50% share. The 2003 declaration contained another version of the same page drawn up in 2005, one of which indicated ALL 1,200,000 as the purchase price and ALL 1,800,000 as additional expenses, essentially incurred after November 2000. That situation was irregular as to the procedures before HIDAACI, in the absence of any record or note in the file. The price in the purchase contract was ALL 1,200,000, which was lower than the average market price for a newly built flat in Shkodër in 2000. The flat had been declared as purchased in April 2000 with the proceeds from the sales of two flats in November 2000. The timing and amount (exceeding the purchase price) of the alleged alterations/work in the flat were not proven by the relevant documentation. The garage purchased with the flat had first been declared in the vetting declaration and had not been mentioned in the 2003 declaration.

23. It was not specified in the purchase contract that the flat had been sold unfinished (*gjendje karabina*), which the applicant argued could have explained a lower price. It was specified that the flat could be used by the buyers, could be registered immediately by them and was free of any charge or mortgage. The flat was part of a building, which implied that the latter had been inspected and registered as completed and functional. The proceeds from the sales in November 2000 had only provided ALL 1,000,000, and there was no evidence that the remaining ALL 800,000 came from a lawful source. It was apparent from the available data that the declared price of ALL 3,000,000 – and, *a fortiori*, the purchase price of ALL 1,200,000 – for a flat of that size with a garage was at least half the market price for the year 2000. The applicant had not convincingly proven why the seller had sold below the market value. As to the modified page in the 2003 declaration, assuming it had been done following HIDAACI's request, there should have been some record made.

24. Thus, the applicant had made an insufficient, incomplete and inaccurate declaration, providing contradictory and unconvincing explanations, in particular as to the financial resources used to purchase the flat in April 2000.

25. As to the flat of 113 sq. m. in Tirana, acquired in 2003 and owned by his spouse until it was sold in or around 2009, the applicant had declared it

with a value of ALL 4,000,000. That flat had been declared in the vetting declaration as a source used for the creation of another asset, a flat owned when the vetting process started. The purchase contract for that first flat specified a price of ALL 1,950,000. Even accepting the explanation that the significant difference of ALL 2,050,000 concerned the declaration of additional expenses, there was no proof that they had been incurred. The applicant had made an inaccurate and insufficient declaration regarding the purchase price of that flat. Apparently, the price specified in the contract was – as in some other cases – fictitious, to avoid the significantly higher tax rate applicable to amounts over ALL 2,000,000. Thus, there was reason to doubt that the alleged alteration work had been carried out immediately after the purchase, or that the amount of related expenses had been incurred.

26. In the vetting declaration, the applicant had declared a garage in Tirana acquired by his wife in 2007 for ALL 400,000. It had not been declared in any of the annual declarations of assets. The applicant had concealed that asset and made a false statement.

27. The IQC concluded that the applicant had not complied with the Assets Disclosure Act (Law no. 9049/2003) and section 32 of the Vetting Act, which justified his dismissal under section 61(3) of the Vetting Act, as well as, for the garage in Tirana, under Article D § 5 of the Annex to the Constitution.

(ii) Financial assessment

28. The period 1992-2002 was considered at the applicant's request and based on the data he had provided. Considering his net income and income from his spouse's professional activity, in 1992-2003, 2004, 2005, 2008 and 2009 he had not had enough income to incur the expenses and make the savings declared in the annual declarations. The data declared over the years often did not match the documentation before the IQC. For 1992-2003 there was a negative balance of ALL 2,772,865. Between 2004 and 2016 the balance was negative for four years and, during that period, the expenses with unjustified financial resources amounted to ALL 4,427,471. His spouse's income had not been declared in the declaration of assets for 2006. The IQC dismissed the argument aimed at proving substantially lower living expenses. It considered that a minimum standard cost of living – ALL 440 per day per person (some EUR 3.50) until 2007 and ALL 352 by 2016 – had been applicable nationwide, irrespective of where one lived in the country. The applicant had made an insufficient declaration and lacked lawful financial resources to justify the assets and expenses, which justified the application of Article D § 3 of the Annex to the Constitution and his dismissal under section 61(3) of the Vetting Act.

(b) Background assessment

29. The applicant had filled out the background declaration incorrectly and untruthfully. Taking into account the CISD's submission (see paragraph 12 above) and section 38(1) of the Vetting Act, he had had inappropriate contact with persons involved in organised crime and could be put under pressure by them. He had not provided convincing evidence to prove otherwise.

30. The applicant had failed to declare the 2016 criminal investigation (see paragraph 7 above) and specify mitigating circumstances if appropriate. Non-declaration constituted an inaccurate declaration within the meaning of Article DH of the Annex to the Constitution and section 39(2) of the Vetting Act (see paragraphs 54 and 63 below). A final judgment resulted from a proper judicial process with guarantees for the parties and an evaluation of evidence by a court, in compliance with the principle of adversarial procedure, with the participation of all the interested parties, who could exercise their rights. A prosecutor's decision to discontinue an investigation did not have the same effect because it could be reopened at any moment. Law no. 10 192/2009 provided an exemption only when an acquittal was declared by a final court decision, similarly to section 3(15) of the Vetting Act (see paragraph 59 below). The legislation did not afford the CISD room for interpretation or discretion in the evaluation and listed only one exemption from the general rule as to considering a person as involved in organised crime, namely full acquittal by a court. The standard for the background assessment went beyond the fact of being punished for criminal acts. Under section 39(2) of the Vetting Act, the applicant had to declare any inappropriate contact in the background declaration, relying on the definition in section 3(15) of the Vetting Act.

31. The IQC endorsed as well-established the CISD's findings as to the applicant's "inclination towards criminal activities"; that he could be "easily put under pressure by criminal structures"; and that he had [had] "inappropriate contact". While those findings had to be evaluated and used "with a critical eye and logical analysis", they had been reached by the specialist agency under section 38(1) of the Vetting Act. The IQC did not ascertain otherwise during its own investigation and based on the documents before it. The applicant had not disproven those findings either. Thus, Article DH of the Annex to the Constitution and dismissal under section 61(2) of the Vetting Act had to be applied.

(c) Evaluation of professional competence and matters relating to ethics and integrity

32. Under this heading the IQC considered, *inter alia*, matters mentioned in the HCJ's report, the applicant's participation in proceedings concerning a private company and a monetary gift received from it, as well as a *sentenza*

di patteggiamento (a form of simplified procedure comparable to plea bargaining) in Italy in 1999.

(d) Overall conclusion

33. The applicant's ethics and integrity were questionable in that in addition to the statements in the vetting declarations, on several occasions in his statements before the IQC he had denied the truth about receiving a gift of over EUR 500, about giving decisions in cases involving the private company who had gifted it to him, or about the proceedings in Italy. Having regard to section 4(2) of the Vetting Act and making an overall assessment of the applicant's actions and omissions, as well as the failure to show that there were lawful financial resources to justify the expenses and assets, the IQC concluded that he had undermined public trust in the justice system, in which he had been serving at high levels for many years. Consequently, the IQC decided to dismiss him under section 61(5) of the Vetting Act.

C. Proceedings before the SAC

34. The applicant appealed to the SAC. The SAC notified him that the case would be reviewed following the usual written procedure, that is, without a public hearing and in his absence. By a decision of 18 April 2019, the SAC upheld the IQC's decision of 17 July 2018 and held as follows.

1. Evaluation of assets

(a) Regarding the assets

35. The flat in Shkodër had been declared – in the first annual declaration and in the vetting declaration – as purchased in April 2000 for ALL 3,000,000, with the proceeds from the sales in November 2000 and the spouses' work-related income. The purchase price was much lower than the alleged additional costs. They were also higher than the average similar costs in the year 2000 for a newly built flat. It did not appear from the purchase contract that the flat was in an uninhabitable condition, so the price referred to in the contract seemed inaccurate. The applicant had violated the Assets Disclosure Act and section 32 of the Vetting Act, which justified his dismissal under section 61(3) of the Vetting Act.

36. The other two flats had been sold for ALL 1,100,000, whereas the expenditure – allegedly carried out with that money – was ALL 1,800,000. Making its own financial assessment, the SAC confirmed that the applicant had spent that amount, but concluded that part of the expenditure (ALL 700,000) had not come from a lawful source. The applicant had had a negative balance for 1992-2003. The price indicated in the contract for the flat and the garage (ALL 1,200,000) was much lower than the average market price for a similar flat in Shkodër (ALL 3,512,200). Applying the available

official data for 2000, the average construction cost approved for 2000 was ALL 25,825 per metre, which for that flat and garage amounted to ALL 4,080,350. Even accepting that the flat had been purchased unfinished, that was still higher than the declared value of ALL 3,000,000.

37. The applicant had stated that the purchase price (ALL 1,200,000) had been paid in April 2000 out of the family's income, while the proceeds from the sales of the other flats in November 2000 had been used to cover the additional costs (ALL 1,800,000). In the 2003 declaration he had declared those proceeds as the resources used to purchase the flat. In the vetting declaration he had added his and his wife's income. In April 2000 the applicant had not had sufficient savings or income to purchase the flat.

38. As to the flat in Tirana, the value (ALL 4,000,000) mentioned in the 2003 declaration did not match the price indicated in the purchase contract (ALL 1,950,000). There had been an insufficient declaration to HIDAACI, because the applicant had declared more than the double the amount in the contract, without proving the expenses for the work claimed. Those actions violated the Assets Disclosure Act and section 32 of the Vetting Act. The average cost of such a property was ALL 6,039,850. The SAC considered that the parties to the purchase contract had agreed to indicate a lower price in the contract corresponding to the minimum amount of tax to be paid. That asset was related to the financial analysis for 1992-2003, which resulted in a negative balance of ALL 1,339,709. Thus, the available income had been insufficient to acquire that flat in 2003 after having already acquired another one in 2000. The applicant had made an insufficient declaration under Article D §§ 3 and 5 of the Annex of Constitution, together with section 33(5)(b) of the Vetting Act, which justified his dismissal from office under section 61(3) of the Vetting Act.

39. The garage in Tirana had only been declared in the vetting declaration. The applicant should have declared it in his next annual declaration (see paragraphs 26 and 27 above). That omission could not be accepted as excusable forgetfulness but was a course of action (as to another garage not being declared in 2003-04, see paragraph 22 above), violating Article D § 5 of the Annex of Constitution and justifying dismissal from office under section 61(3) of the Vetting Act. The SAC considered, however, that the applicant had made a false and insufficient declaration because of the non-declaration of that garage in the periodic declaration (rather than concealment of an asset).

(b) Liquid assets

40. In 1992-2003, 2004, 2005, 2008 and 2009 the applicant had not had sufficient income to cover the family's expenses and to make the savings declared in the periodic declarations. The IQC concluded that there had been an insufficient declaration on the part of the applicant and a lack of lawful

resources to justify the acquisition of assets and expenses, in breach of Article D of the Annex of Constitution and section 61(3) of the Vetting Act.

41. The balance was negative for 1992-2003 (minus ALL 1,339,708, which was lower than that calculated by the IQC, minus ALL 1,972,969); in 2004 (minus ALL 469,964); in 2005 (minus ALL 1,331,632); in 2008 (minus ALL 696,475); and in 2009 (minus ALL 3,269,401), that is, amounting to a grand total of ALL 7,740,441 (between approximately EUR 60,000 and 62,000, depending on the applicable exchange rates). Under section 33(5)(b) of the Vetting Act, the applicant had not had sufficient lawful resources to justify the properties, savings and expenses over those years. Thus, he had made an insufficient declaration, justifying dismissal from office under section 61(3) of the Vetting Act.

42. According to the applicant, the SAC relied on a new financial analysis and amended, *in peius*, the IQC's findings as to the difference between the income and expenses over the years (see paragraph 36 above and also paragraph 48 below).

2. Background assessment

43. The applicant argued that the case material provided to him contained no evidence or facts proving the assertions made by the CISD and then upheld by the IQC. If there was evidence other than the 2016 discontinuation decision (see paragraph 7 above), the IQC had a legal obligation to make it available, thereby enabling him to put forward a meaningful defence. The IQC had failed to carry out its own in-depth investigation and to disprove the positive assessments made by law-enforcement agencies other than the CISD (see paragraph 14 above).

44. The SAC stated that even though the investigation in 2016 had been discontinued because the impugned act was not a criminal offence, the applicant could still be held liable for concealing that fact or for making an inaccurate and untrue declaration. The exemption under section 3(15) of the Vetting Act did not apply. Under Article DH of the Annex of Constitution, where a vetting subject had inappropriate contact with persons involved in organised crime, a presumption in favour of dismissal from office applied and that person had to prove the contrary. Had the applicant declared the proceedings as regards Article 244 of the Criminal Code, for the accuracy and truthfulness of the background declaration, section 38(5) of the Vetting Act had allowed him to list mitigating circumstances. Even though he had met with L.H. in early 2016, whereas the proceedings had then been opened and discontinued on 8 April and 29 July 2016 respectively, the fact remained that L.H. had not been acquitted by a final court decision. She had to be considered as "a person involved in organised crime" within the meaning of section 38(4)(d) of the Vetting Act, and the applicant had to make a background declaration. Furthermore, the applicant had also been the subject of the same investigation and was also "a person involved in organised crime"

himself for the same purpose. While in one decision the Supreme Court had equated a non-challenged (and thus "final") decision to discontinue prosecution to a final acquittal, in the SAC's view, a verdict of acquittal or guilt had to be given by a court following a judicial procedure based on a complete evaluation of the facts. A final court decision on a person's innocence was required to avoid being classified as a person "involved in organised crime".

45. Referring to the statement in the CISD's submission on certain information giving rise to a reasonable suspicion of his involvement or inappropriate contact with persons involved in organised crime, the applicant argued that had there been evidence other than relating to the proceedings in 2016, it should have been disclosed to the IQC and the latter should have disclosed it to him. The SAC stated that that element was not expressly relied on in the IQC's decision and, in any event, resulted from the general assessment pursuant to section 39 of the Vetting Act based on the information from three law-enforcement agencies. Section 39(2) authorised non-disclosure where disclosure would endanger a source's safety or was the result of a condition defined by the government of another country that presumably provided the information. Article A § 1 of the Annex to Constitution permitted restrictions on a person's constitutional rights during the vetting process.

46. Overall, the acts (inappropriate contact with persons involved in organised crime and an inaccurate declaration) were sufficient – in line with Article DH §§ 3 and 4 of the Annex to Constitution – for a presumption in favour of dismissal from office under section 61(2) and (3) of the Vetting Act.

3. Conclusion

47. Overall, the serious problems relating to the background assessment on account of inappropriate contact with persons involved in organised crime and an inaccurate declaration justified the application of Article DH §§ 3 and 4 of the Annex of Constitution and dismissal under section 61(2) and (3) of the Vetting Act. The findings of the evaluation of professional competence justified the conclusion that the applicant had undermined public trust in the justice system and the application of section 61(5) of the Vetting Act. The SAC upheld the IQC's decision of 17 July 2018, referring to Article D §§ 3 and 5 and Article DH §§ 3 and 4 of the Annex to the Constitution and section 61(2), (3) and (5) of the Vetting Act.

48. In June 2019 the applicant requested a copy of the case file from the SAC in order to prepare his application to the Court. According to him, there was no document in the file, which would set out the financial analysis referred to in the SAC's decision (see paragraph 36 above). He requested a copy of such document to be provided to him. In July 2019 the SAC refused, stating that, under regulations approved by it in June 2018, the judge rapporteur's report, his or her proposal regarding the decision to be made, the

information distributed for deliberations and vote by the judges, the draft decision and the remarks made by the judges during the deliberations and the advisors' reports were confidential and could not be disclosed to the parties.

III. OTHER INFORMATION

49. In April 2018 the applicant enrolled as an advocate and obtained a licence to practise as one. In 2020, he was listed in the register of non-practising *(pasivë)* advocates.

50. On 13 January 2022 the Special Prosecution Office against Organised Crime and Corruption indicted the applicant for the offence of failure to declare, non-declaration, concealment or false declaration of assets, private interests of elected persons and public employees (Article 257/a § 2 of the Criminal Code). He was accused of making false statements in the vetting declaration of assets. It appears that those proceedings are pending. The Special Prosecution Office launched an investigation into the applicant's assets pursuant to section 3(1)(d) of Law no. 10 192 of 3 December 2009 (see paragraph 70 below). A court ordered their preventive seizure. On 9 February 2022 the Special Court of Appeal against Organised Crime and Corruption upheld that decision, noting that there were convincing indicators pointing to his criminal liability for an offence under Article 257/a § 2 of the Criminal Code.

51. In separate proceedings, the applicant was convicted under Article 190 § 1 of the Criminal Code (falsification of seals, stamps or forms) for failing to disclose the 1999 sentence in Italy in his self-declaration under the Decriminalisation Act (see paragraph 8 above). On 26 September 2022 the Court of Appeal overturned his conviction and acquitted him. On 21 March 2023 the prosecution filed a cassation appeal against the acquittal with the Supreme Court, where the appeal is currently pending.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. ALBANIAN LAW AND PRACTICE

52. For a summary of the applicable domestic law and other references, see *Xhoxhaj v. Albania* (no. 15227/19, §§ 93-209, 9 February 2021). The provisions of particular pertinence to the vetting proceedings in the present case are as follows.

A. Vetting process

1. Constitution of the Republic of Albania

53. Article D of the Annex to the Constitution reads as follows:

"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 shall be considered lawful if the income has been declared and subject to the payment of taxes. 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, which the person shall have the burden of disproving."

54. Article DH of the Annex to the Constitution, entitled "Background Assessment", reads as follows:

"1. Persons to be vetted shall submit a background declaration and are subject to a background assessment, in order to identify those with inappropriate contact with persons involved in organised crime [*përfshirë në krimin e organizuar*]. The background assessment for links to persons involved in organised crime shall be based on the background declaration and other evidence, including Albanian or foreign court decisions.

2. Persons to be vetted shall submit a completed detailed background declaration to the [IQC] covering the period from 1 January 2012 to the day of the declaration, as per the law. The background declaration may be used as evidence only in this process and in no circumstances in criminal proceedings.

3. If the person being vetted has had inappropriate contact with persons involved in organised crime, a presumption in favour of the disciplinary sanction of dismissal shall apply, which the person shall have the burden of disproving.

4. If the person to be vetted does not submit the background declaration in time in accordance with the law, [he or she] shall be dismissed. If the person being vetted takes steps to inaccurately disclose or hide contact with persons involved in organised crime, a presumption in favour of the disciplinary sanction of dismissal shall apply, which the person shall have the burden of disproving."

2. *Law no. 84/2016 on the Transitional Re-evaluation of Judges and Prosecutors ("the Vetting Act")*

(a) General provisions

55. Under sections 22 and 23, each vetting body is assisted by the Legal Service Unit, which carries out advisory and supporting activities in the decision-making process. Legal advisors assess the file and prepare a case report. Financial advisors study the file from a financial and economic point of view and prepare a financial report containing, in particular, a financial assessment of the vetting subject's assets. Advisors and their related persons must submit an annual declaration of assets (section 26). They receive 80% of the monthly salary of the vetting bodies' members (section 29). The vetting bodies' staff have the right to the special State protection regarding their life, health and property, as defined in the relevant legislation (section 25).

56. Under section 45, members of the IQC and SAC investigate and assess (*hetojnë dhe vlerësojnë*) all facts and circumstances required for the re-evaluation procedure. The vetting bodies, in order to establish facts and circumstances, may collect declarations from the vetting subject, witnesses, experts and the public (section 49). During the administrative investigation, the IQC and SAC may request information from any subject of public law (sections 49 and 50). They administer documents necessary for the investigation. Under section 52, if the IQC or SAC concludes that the evidence has reached the standard of proof (*provat kanë nivelin e provueshmërisë*) under section 45, the vetting subject has the burden of presenting evidence or other explanations to the contrary.

57. Under section 61, dismissal from office may be ordered if:

> "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; *në rast se nga vlerësimi tërësor*], 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."

(b) Re-evaluation criteria

(i) Evaluation of assets

58. Under section 32, where a vetting subject is objectively unable to present the document which justifies the legitimacy of the creation of an asset,

he or she must certify to the vetting body that the document is missing, lost or cannot be reproduced or obtained in another way. The vetting body decides if non-presentation of the document is justified.

(ii) Background assessment

59. Section 3 of the Act defines

(a) "inappropriate contact" as a meeting, electronic communication or another type of wilful contact which is not in compliance with the holding of office by the vetting subject;

(b) "a person involved in organised crime" as any person who has been convicted or criminally prosecuted for a criminal offence listed in section 3(1) of Law no. 10 192 of 3 December 2009 as amended (see paragraph 70 below), except when he or she was declared not guilty by a final court decision (*vendim gjyqësor të formës së prerë*). The person is considered to be involved in organised crime even if (a) the criminal proceedings have been terminated by the prosecuting authority because of the person's death, or because there was a legal bar on his or her being charged with or convicted of an offence (*nuk mund të merret si i pandehur dhe nuk mund të dënohet*) (see also paragraph 66 below); or (b) he or she has been found not guilty by the court because the criminal offence was committed by a person who cannot be charged and convicted (*që nuk mund të akuzohet ose dënohet*).

(c) "organised crime, trafficking and corruption" as the criminal offences listed in Article 75/a of the Code of Criminal Procedure (see paragraph 65 below), which fall under the competence of the Serious Crimes Court or another court which may substitute it in the exercise of those competences.

60. Under section 34 of the Act, the objective of the background assessment is verification of a vetting subject's declarations and other data, in order to identify vetting subjects with inappropriate contact with persons involved in organised crime, as provided for in Article DH of the Annex to the Constitution (see paragraph 54 above). Under section 35, a vetting subject must fill in the background declaration form and submit it to the Classified Information Security Directorate ("the CISD"). The CISD initiates the background check procedures, in compliance with sections 4(4), 37 and 38 of the Act.

61. Under section 36, the vetting bodies, in collaboration with the CISD, are responsible for administering the background checks. A working group set up by the CISD, State Intelligence Service and Internal Affairs and Complaints Service attached to the Ministry of the Interior carries out the tasks under the Act. Under section 37, the working group must abide by the general requirements of the background assessment such as (a) an accurate verification of identity, past and present, for every individual; (b) verification if he or she has demonstrated criminal tendencies of involvement in organised crime; (c) a general evaluation of whether the individual might be put under pressure by criminal structures; and (ç) the individual having been, being or

attempting to be covertly involved (in organised crime) whether alone, in complicity with or as part of a criminal organisation.

62. Under section 38, the background assessment must be based on the most accurate evidence, intelligence and information available. The assessment must contain the circumstances supporting a finding, as well as any mitigating circumstances. A background assessment that fails to consider supporting and mitigating circumstances is incomplete. Section 38 lists (i) examples of situations of inappropriate contact, such as non-casual communication with a person involved in organised crime; (ii) examples of mitigating circumstances, such as where the vetting subject plausibly argues that he or she was unaware that the person was involved in organised crime, or has distanced himself or herself from that person; (iii) examples of situations where it could be concluded that the background declaration was not completed fully and truthfully, such as failure to declare contact which is established by relevant and credible intelligence which is corroborated or deemed reliable, and the vetting subject has had other contact which was either declared or established, or there is other evidence of a benefit, action or consequence from that contact which creates a reasonable suspicion that the obtained information is the only plausible explanation; and (iv) further mitigating circumstances or factors which could be considered a plausible explanation for contact or failure to declare.

63. Under section 39, the CISD, in collaboration with the working group, verifies whether the information is accurate and whether the vetting subject has had inappropriate contact with persons involved in organised crime or alleged members of criminal organisations (*me personat e përfshirë në krimin e organizuar ose me persona të dyshuar të krimit të organizuar*). The CISD submits a report to the IQC. That report determines whether the vetting subject has completed the background declaration fully and truthfully, and whether there is information in it or elsewhere which indicates that he or she has had inappropriate contact with persons involved in organised crime, and a recommendation about the appropriateness of continuing to hold public office. The report provides a description of that contact and factors considered under section 38 of the Act. Information shall not be made public (*nuk bëhet publik*) if it endangers the safety of a source or is a result of a condition from a foreign government.

64. The standard background declaration form includes the following questions: “Have you ever been involved in activities related to organised crime?”; “Have you had inappropriate contact in the form of a meeting, electronic communication or any other means for a deliberate meeting, with one or more persons involved in organised crime, which is not compatible with the exercise of duty?”; “Have you had appropriate contact with persons involved in organised crime in the exercise of your duty?”; and “Have you accepted/exchanged money, favours, gifts or assets with a person involved in organised crime?”.

B. Other relevant legislation and practice

1. Code of Criminal Procedure

65. Under Article 75/a (a) of the Code, as amended by Law no. 35/2017, the Anti-Corruption and Organised Crime Court deals with certain crimes, including those under Articles 244 and 259 of the Criminal Code.

66. Under Article 328, upon termination of preliminary investigations, the prosecutor will dismiss the charge or case when, *inter alia*, the act is not a criminal offence, the person cannot be charged or punished or the defendant has died.

67. Under Article 329/c, added in 2017, where, after the decision to dismiss the charge or case, new information or evidence is discovered that shows that the decision was unfounded, a judge may revoke it, at the prosecutor's request.

2. Law no. 9049 of 10 April 2003 (Assets Disclosure Act)

68. Under section 4, public officials are required to submit annual declarations to HIDAACI in respect of private interests, the sources of their creation, as well as in respect of financial obligations, *inter alia*, as regards immovable assets and real rights over them; movable assets, registrable in public registers; items of special value over ALL 300,000; financial obligations to legal and natural persons; personal income for the year, from salary or participation in boards, commissions or any activity that brings personal income; private interests of the subject that match, contain, are based on or originate from the family relationship or cohabitation; and any declarable expenditure worth more than ALL 300,000 carried out during the year of declaration.

69. Under section 38, false disclosure of assets constitutes a criminal offence under the applicable criminal law (Article 257/a of the Criminal Code).

3. Law no. 10 192 of 3 December 2009 "On preventing and combating organised crime, trafficking, corruption and other crimes through preventive measures relating to assets" as amended

70. Under section 3, the Law concerns persons for whom there is a reasonable doubt/suspicion based on indications (*dyshim i arsyeshëm, i bazuar në indicie*) of, *inter alia*, participation in armed gangs, criminal organisations and structured criminal groups, and the commission of crimes by them, and the commission of a number of other crimes, including under Article 244 of the Criminal Code, where there are indications of illegal assets. The offence under Article 259 of the Criminal Code was added to the list by Law no. 70/2017. Under section 24, a court orders the confiscation of a person's assets if there is a reasonable doubt/suspicion based on indications

of his or her involvement in the criminal activities specified in section 3 and it is not proven that the assets have a legal origin, or the person has not justified the possession of assets or income which are disproportionate to the level of income or the profits gained through legal resources declared by him or her. Assets may be confiscated even where the criminal proceedings for the above-mentioned offences are discontinued or the person is found not guilty, except when that is because the act did not exist or was not a criminal offence, or because that person did not commit the offence.

4. Law no. 138/2015 "On ensuring the integrity of persons exercising, elected or appointed to public functions" (Decriminalisation Act)

71. Under sections 2 to 5, as amended by Law no. 38/2016, persons to be appointed to public office must complete and sign a self-declaration form declaring the absence of grounds preventing their appointment, such as, *inter alia*, the absence of a final criminal conviction – within or outside Albania – with a sentence of imprisonment for a number of offences listed in the Law. A false declaration is punishable under Article 190 of the Criminal Code.

72. The standard self-declaration form contains the following questions: "Have you ever been convicted by a final judicial decision by an Albanian or foreign judicial authority?"; "Have you been sentenced to imprisonment by a non-final court decision by an Albanian or foreign judicial authority, for a criminal case not resolved by a final court decision?"; "Have you ever been under investigation or trial by a foreign authority, for committing a criminal offence?"; and "Have you ever been detained or arrested by law-enforcement agencies for committing a criminal offence?".

5. Constitutional Court's decision no. 2/2017

73. As regards the integrity background assessment, the Constitutional Court made the following findings:

(a) The assessment would be based on a declaration completed by the person being vetted and other evidence, such as domestic or foreign court decisions. Under section 36(1) of the Vetting Act, the vetting bodies, in cooperation with the CISD, would be responsible for the integrity background check. Referring to the Venice Commission's *amicus curiae* brief (see paragraph 74 below), the Constitutional Court accepted that the institutions mentioned in section 36 of the Vetting Act would play an active role in carrying out the integrity background assessment.

(b) Having regard to Article Ç § 4 of the Annex to the Constitution and sections 45, 50 and 51 of the Vetting Act, the vetting bodies would maintain overall supervision over the integrity background check. The other bodies involved in the vetting process would assist the vetting bodies in fulfilling their mandate. In all circumstances, with reference to section 4(2) of the Vetting Act and Article 179/b § 5 of the Constitution, ultimate

decision-making would rest with the IQC and the SAC, which would be established as independent and impartial institutions. The vetting bodies would perform supervisory and evaluating functions and would not be bound by the findings made by other auxiliary institutions. In so far as law-enforcement agencies had an auxiliary role and their activity was subject to supervision by and control of the vetting bodies, they would not be able to commence their activities without the prior constitution of the vetting bodies.

(c) Given their purpose, functioning, expertise and tasks, the auxiliary bodies would help the vetting bodies in exercising their constitutional functions and fulfilling their mission pursuant to the principles of cooperation, interaction and coordination of all institutions involved in the vetting process. They would not perform their tasks beyond the scrutiny of the IQC and the SAC. This was all the more important to avoid any potential interference by the executive power with the vetting process, notably as regards the integrity background check.

(d) The vetting bodies were the only bodies empowered to dismiss a judge or prosecutor from office. Only they could determine whether the declarations had been filed within the prescribed time-limit. At the end of the proceedings, they would give a reasoned decision describing the entire decision-making.

II. OTHER RELEVANT MATERIAL

74. The relevant parts of the Venice Commission's *amicus curiae* brief for the Constitutional Court on the Vetting Act (Opinion no. 868/2016 of 12 December 2016, CDL-AD(2016)036) provide as follows:

> "28. ... If the process of vetting is conducted or controlled by the executive, the entire process of vetting may be compromised. Therefore, it is important to ensure that the involvement of the executive, in law and in practice, is limited to the extent that is strictly necessary for the effective functioning of the vetting bodies.
>
> ...
>
> 35. ... The concern however remains that in certain circumstances, according to Article 39(2) concerning the background assessment, information collected as a result of the background check 'shall not be disclosed if it endangers the safety of a source or is a result of a condition from a foreign government'. In this case, the re-evaluation institutions may lack the possibility of independent re-evaluation and would only be able to rely on the assessment/evaluation made by the National Security Authority. Thus, the rule of prohibition of disclosure may only be possible if the information in question is favourable to the assessee ...
>
> 54. The use of such assessments for the purposes of the re-evaluation should be under the supervision and control of the Independent Commission and subject to the appellate control of the Appeal Chamber. While the Venice Commission does not see any objection to the use of such a working group, some concerns may be formulated concerning the use of working groups consisting only of security personnel on which no representative of the Independent Commission itself appears to be included. Moreover, there may be also concerns about Article 39(2) last sentence, that

information is not to be disclosed if it endangers the safety of a source or is the result of a condition from a foreign government. This is reasonable but only on condition that the information is favourable to the assessee ..."

THE LAW

I. ALLEGED ABUSE OF THE RIGHT OF APPLICATION

75. The Government argued that the applicant had abused his right of application under Article 34 of the Convention because his complaints – relating to access to the CISD's report and practising as an advocate – were based on untrue facts. In particular, the applicant's allegation that he could not practice law was untrue because he had a licence to practice as an advocate and had not been disbarred; he had not informed the Court accordingly. Despite his allegation before the Court, he had been provided with the CISD's report in the vetting proceedings.

76. The applicant claimed that the thrust of his complaint concerned the provisions of the Lawyers Act imposing a ban on practising as an advocate after dismissal from office in vetting proceedings and the risk of being disbarred without any possibility of re-enrolling; and that his other complaint before the Court was related to access to the evidence justifying the conclusions in the CISD's report.

77. The Court considers that in view of the explanations given by the applicant, there are no reasons to conclude that he had withheld information concerning the very core of the case, in a deliberate attempt to mislead the Court. The Court notes that the thrust of his other complaint before the Court is about the alleged non-disclosure of documents or evidence which prompted the CISD to make the findings in its report. Having regard to the relevant case-law (see *X and Others v. Bulgaria* [GC], no. 22457/16, § 145, 2 February 2021; *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 172, 28 June 2018; *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 97, ECHR 2012), the Court dismisses the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

78. The applicant complained that he had not had a fair and public hearing by an independent and impartial tribunal established by law in the vetting proceedings, in breach of Article 6 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

1. Complaints relating to the right to a fair hearing

79. The Government referred to the requirement to exhaust domestic remedies, stating, in substance, that the applicant's procedural grievances were abusive, unsubstantiated or otherwise ill-founded because he had not sought an extension of the time-limit for studying the case file and making submissions, or an adjournment of the IQC's hearing on 10 July 2018. Moreover, he had not requested access to any confidential information that might be in the case file before the vetting bodies or "in his file".

80. The applicant submitted that the Government's arguments concerning the admissibility of the complaint were unfounded. He had made every reasonable effort to exercise his procedural rights to the extent permitted by Albanian law.

81. Having regard to its findings in *Xhoxhaj v. Albania* (no. 15227/19, §§ 236-46, 9 February 2021), the Court considers that the civil limb of Article 6 § 1 of the Convention is applicable and that the criminal limb of Article 6 is inapplicable. It also considers that the Government's remaining submissions concern the well-foundedness of the allegations under Article 6 of the Convention. In so far as the requirement to exhaust domestic remedies is concerned, and for the same reasons as outlined in *Xhoxhaj*, cited above, § 250, the Government's objection should be dismissed.

82. The Court considers that the complaint concerning the guarantees of a fair trial under Article 6 § 1 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. Other complaints under Article 6 of the Convention

(a) Independent and impartial tribunal established by law

83. The applicant complained that the vetting bodies, generally and as regards the benches hearing his case, had not been independent and impartial. The parties' observations are similar to those in *Xhoxhaj* (cited above, §§ 260-75). The Court considers that the applicant has not raised any meritorious argument and finds no reason to depart from its findings in *Xhoxhaj* (§§ 294-317). Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

84. The Court notes that in his application the applicant referred – as part of his arguments relating to the applicability of Article 6 and as regards the requirement of an independent and impartial tribunal – to certain supposed defects in the appointment procedure for certain members of the vetting bodies. In his observations of November 2020 he further argued, on similar grounds, that the SAC in his case had not been a tribunal "established by law"

(see also *Besnik Cani v. Albania*, no. 37474/20, §§ 66-73, 4 October 2022, and *Sevdari v. Albania*, no. 40662/19, §§ 109-13, 13 December 2022). The Government argued that the complaint was belated. Thus, leaving aside the question of whether domestic remedies have been exhausted (ibid.), the Court considers that the applicant has not shown that he complied with the then applicable six-month rule under Article 35 § 1 of the Convention (see, in a similar context and in the same vein, *Xhoxhaj*, cited above, §§ 252-57). Accordingly, this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(b) Public hearing before the SAC

85. The Government stated that the SAC had notified the applicant that the case would be examined following the usual written procedure. He had not requested a public hearing and thus failed to exhaust domestic remedies. The applicant argued that the Vetting Act did not provide for an oral and public hearing before the SAC and did not allow a vetting subject to request one. The parties' other submissions are similar to the observations made in *Xhoxhaj* (cited, above, §§ 337-38).

86. The Court does not need to address the Government's preliminary objection because it has previously found in *Xhoxhaj* (cited above, § 343) no violation of Article 6 § 1 of the Convention since the nature of the proceedings did not require a public hearing on appeal. The circumstances of the present case are similar. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Merits

87. The Court notes at the outset that the vetting proceedings in respect of the applicant were pursued for each of the three components of the vetting process. Throughout the proceedings, he exercised his procedural rights in respect of each component and raised procedural grievances within each of them. The vetting bodies' assessment within each criterion was concluded with a finding under one of the paragraphs of section 61 of the Vetting Act concerning grounds for dismissal (see paragraphs 27, 28, 31, 33, 35 and 46-47 above). As regards the right to a fair hearing under Article 6 of the Convention, the applicant pursued a similar line of argument before the Court, raising various aspects within his complaint under Article 6 as regards, respectively, the components of the vetting process related to the evaluation of assets and the background assessment.

88. In view of the foregoing, the Court will examine in turn the applicant's arguments relating to the re-evaluation criteria in the vetting proceedings against him as regards his right to a fair hearing under Article 6 § 1 of the Convention.

1. Evaluation of assets

(a) The parties' submissions

(i) The applicant

89. As to the proceedings before the IQC, the applicant had had from 28 May to 22 June 2018 to prepare his defence. Receiving no reply to his request on 6 June 2018 on the IQC's methodology for its financial report, he had submitted his observations on 22 June 2018. After his renewed request on 2 July 2018, the IQC had provided him on 3 July 2018 (that is, shortly before a hearing listed for 4 July 2018) with a revised financial report including his financial situation for 1992-2002, and had given him until 6 July 2018 to submit comments or evidence. Thus, he had only had six days to challenge the financial report and only three days to submit evidence. The legislation did not specify time-limits and the possibility of requesting additional time. The right to seek an adjournment was not listed among a vetting subject's rights. The applicant had not unequivocally had, either in law or in practice, a right to have the examination of his case adjourned to prepare his defence. It was unlikely that such an adjournment would have been granted, had he requested it.

90. As to the proceedings before the SAC, its financial assessment had significantly differed from that of the IQC and had not been disclosed to him. He had learnt of its existence from the SAC's decision and thus could not have requested additional time to prepare a response. After the vetting proceedings, the SAC had refused to disclose a confidential internal document relating to that financial assessment.

91. The vetting bodies had calculated or estimated the annual living expenses for 1992-2003 in various ways. Upon the Public Commissioner's request, in 2021 the SAC had issued some guidance on the matter under section 66(2) of the Vetting Act. Although HIDAACI had informed the applicant that its estimate was based on data from the National Statistics Institute, the latter had then indicated that no official data was available for the period before 2000. Thus, the vetting bodies' calculations in his case had not been based on any official reference data. The lack of such data translated into an unfettered discretion for the vetting bodies and double standards. The IQC had estimated his living expenses for 1992-2003 to be two to ten times higher than in other decisions also delivered in 2018 as regards identical family compositions.

92. Domestic law did not specify limitation periods. The authorities could go far back into the past of a vetting subject and reverse the burden of proof on almost any past fact or circumstance, no matter how insignificant or remote. Limitation periods ensured legal certainty, protected against stale claims which might be difficult to counter and prevented injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable

and incomplete because of the passage of time. The applicant had had to prove that he and his wife had accrued sufficient income in the early 1990s to justify the purchase of two flats and to prove the exact expenses for renovation work in 2000 and 2003. The far-reaching temporal scope of the vetting process had put him in an impossible position. During the proceedings, he had argued that it was objectively impossible to prove those expenses or savings almost twenty years later. The Vetting Act did not clarify what constituted acceptable means of confirming the lawfulness of income, or to what extent deficiencies in the documentation (such as a lack of evidence for the activities over twenty years or a lack of bank documents) could be excused. The legislation did not account for frequent amendments in fiscal and financial laws, the informal economy in the early years of democracy, the lack of obligation to keep invoices when that had not been expressly required by law and the fact that State institutions had kept financial documentation for a limited period. All that created enormous difficulties to prove the lawfulness of wealth, especially prior to the enactment of the Assets Disclosure Act (Law no. 9049/2003). That should have carried significant weight in his case, where the assets assessment had revolved around income generated, and expenses incurred, in 1992-2003. The vetting bodies had adopted an unjustifiably rigorous approach to his detriment, whereas in similar cases they had accepted the situation of the informal economy as a mitigating circumstance for inaccuracies in past annual declarations.

(ii) The Government

93. The applicant had participated in the administrative investigation, had then had access to all the material in the case file before the IQC and had had adequate time to make submissions and present evidence, including before and during the hearing before the IQC. The IQC had admitted them to the case file and examined them along with other evidence. He had been granted an extension of time in June 2018 and had not requested any extension thereafter.

94. The living expenses for 1992-2003 had been assessed at the applicant's request and referring to the report of an expert retained by him. The IQC had considered the data obtained from HIDAACI and relied on the subsistence minimum. Had a more detailed calculation been made, the calculation of living expenses for the applicant would have been several times higher to his greater detriment. There had been no departure in his case from the SAC's established practice as the ultimate authority with full jurisdiction over questions of fact and law.

95. The assets assessment concerned the declaration and audit of assets, verification of the legality of the sources of their creation and the fulfilment of financial obligations. A person being vetted had to fill in a vetting declaration of assets and interests and submit additional documentation that he deemed necessary for the examination of the legality of the property

declared. Section 32 of the Vetting Act provided for the possibility of being relieved of the burden of proof regarding a fact or circumstance when the person proved that he was objectively unable to present the document. The applicant had never claimed to have been in such a situation. He had made an incorrect declaration, lacked legal resources to justify the property, made a false declaration and hidden property.

(iii) Third-party intervener

96. Res Publica referred to the impossibility for vetting subjects to obtain access to a critical piece of evidence where asset declarations were considered inadequate, namely a financial advisor's opinion. Under the Vetting Act and the vetting bodies' internal regulations, documents compiled by legal and financial advisors were confidential and could not be made public. Their qualifications were disputable, and their close links to the vetting bodies raised concerns about their impartiality. They did not qualify as experts but as witnesses against a vetting subject.

(b) The Court's assessment

97. Even though the criminal limb of Article 6 with the specific guarantees under its paragraph 3 (a) and (b) do not apply in the present case (see *Xhoxhaj*, cited above, § 246), the Court notes that the applicant was a party in proceedings which were disciplinary in nature and based on preliminary findings, as to the relevant points of fact and law, initially made by way of an administrative investigation. The applicant was required to disprove those findings, failing which he could be dismissed from office. Thus, the Court considers that under the civil limb of Article 6 § 1 concerning the applicant's "civil rights and obligations", he had to be afforded an adequate opportunity to oppose those findings and to plead his case in an effective manner (see *Xhoxhaj*, cited above, §§ 326 and 328).

98. It is noted that the applicant was afforded three days, from 3 to 6 July 2018, to adjust his defence by submitting written observations and adducing evidence on the IQC's amended financial assessment (see paragraph 20 above). The Court agrees with him that, in view of the nature and scope of the factual and legal matters at stake, that period appears to have been rather short. However, in June 2018 the IQC had already granted to the applicant an extension of the time-limit on his request (see paragraph 18 above); he had been afforded an opportunity to study the case file and to make submissions and adduce evidence. The applicant did not seek further extension of the time-limit set to 6 July 2018 and/or an adjournment of the hearing listed for 10 July 2018.

99. After 6 July 2018 the applicant also made both written and oral submissions and adduced evidence on the matters pertaining to the assets assessment and specifically to the amended findings concerning the financial

assessment, in particular for 1992-2002. Those were admitted to the case file for examination by the IQC. Furthermore, it is noted that the examination of that aspect of the case was initially prompted by the applicant's own submissions, which he had had time to prepare prior to 22 June 2018 (see paragraph 19 above). Moreover, based on the IQC's final findings in the decision of 17 July 2018, the applicant was then afforded an opportunity to plead his case before the SAC. Therefore, considering the proceedings in their entirety, the Court concludes that the applicant's right to a fair hearing was not violated on that account.

100. As to the SAC's financial assessment, the Court notes that the Public Commissioner did not appeal (compare *Sevdari*, cited above, §§ 9-13 and 122), and that the applicant appealed to the SAC against the IQC's decision to dismiss him from office, challenging, *inter alia*, the IQC's final financial assessment as stated in that decision (see paragraphs 22-28 above). It appears that the Vetting Act provided the possibility for the SAC to carry out its own investigation and to shift the burden of proof onto the appellant, in a manner similar to the approach taken by the IQC during its administrative investigation (see paragraph 56 above). In substance, when upholding the IQC's decision, the SAC merely took a different stance on some specific aspects of the IQC's definitive calculations in its decision, in response to the applicant's points of appeal. The SAC's findings were clearly outlined in its decision, were based on those calculations and took into account his submissions contesting them as to the quantum or methodology used. There is no indication that the SAC was presented with any submissions or evidence which were not disclosed to the applicant or on which he was not afforded an opportunity to comment in the course of the written procedure before it. In any event, a refusal to disclose some internal documents generated within the SAC itself (see paragraphs 48 and 55 above) for the purpose of facilitating the judicial formation's deliberations in the part relating to the financial assessment did not offend the requirements of the civil limb of Article 6 of the Convention (compare *Letinčić v. Croatia*, no. 7183/11, §§ 49-51, 3 May 2016, *Kramareva v. Russia*, no. 4418/18, § 34, 1 February 2022, and cases cited therein).

101. As to the alleged inconsistency in making an estimate of annual living expenses (see paragraphs 28 and 91 above), the Court reiterates that divergences in case-law between domestic courts or within the same court are not, in themselves, contrary to the Convention, in particular Article 6 (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 116, 29 November 2016). A violation of the right to a fair hearing under Article 6 § 1 of the Convention could arise only if "profound and long-standing differences" exist in the case-law of the domestic courts; the Court then has to establish whether the domestic law provides for a mechanism for overcoming these inconsistencies; and whether that mechanism has been applied and, if appropriate, to what effect (ibid.). The IQC's decision in the

applicant's case and the cases mentioned by him were delivered within the same period, specifically at the early stage of the vetting process before the IQC in 2018, and did not depart from any well-established and consistent practice by the SAC. The consistency of domestic case-law, accordingly, does not appear to raise an issue under Article 6 § 1.

102. The thrust of the applicant's argument is rather about the alleged lack of a single method to calculate living expenses which adversely affected his argument pertaining to his saving capacity in the 1990s. While the SAC identified a need for a uniform methodology in 2021 (see paragraph 91 above), the Court notes that the IQC's approach in the applicant's case in 2018 does not appear to have been arbitrary or manifestly unreasonable. The IQC's methodology document referred to an estimate calculated in proportion to the years for which there was an obligation to declare. The IQC ultimately considered that some EUR 3 per day for each person in the household had to be considered the minimum cost of living at the time (see paragraph 28 above). The Court considers that the vetting bodies' estimate of essential living expenses in this context was not arbitrary or manifestly unreasonable.

103. Lastly, the Court reiterates that limitation periods ensure legal certainty, protect potential defendants from stale claims which might be difficult to counter and prevent any injustice which might arise if the courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time (see *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 137, ECHR 2013, and *Xhoxhaj*, cited above, § 348).

104. As stated in *Xhoxhaj* (§ 349), the special features of the widely used processes of audit of assets must also be taken into account. Given that personal or family assets are normally accumulated over the course of working life, placing strict temporal limits for the evaluation of assets would greatly restrict and impinge on the authorities' ability to evaluate the lawfulness of the total assets acquired by the person being vetted over the course of his or her professional career. An evaluation of assets manifests certain specificities, unlike ordinary disciplinary enquiries, which would call for a greater degree of flexibility to be granted to the respondent State for the application of statutory limitations, consistent with the objective of restoring and strengthening public trust in the justice system and ensuring a high level of integrity expected of members of the judiciary. It can also be a matter of interpretation as to when exactly a specific disciplinary offence may have occurred in this context, that is, whether at the time the asset was initially acquired or at a later point in time when the asset was disclosed in a periodic declaration of assets. Such flexibility cannot be unlimited and the implications for legal certainty and an applicant's rights under Article 6 § 1 of the Convention should be considered on a case-by-case basis (ibid.). It is not *per se* arbitrary, for the purposes of the civil limb of Article 6 § 1 of the Convention, that the burden of proof shifted onto an applicant in the vetting

proceedings after the IQC had made available the preliminary findings resulting from the conclusion of the investigation and had given access to the evidence in the case file (see *Xhoxhaj*, cited above, § 352, and the cases cited therein).

105. The Court also 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).

106. The Court notes, first, that the IQC's report of May 2018 did not seem to base its findings on the family's financial situation of 1992-2002, such as lack of lawful resources to purchase the flats in 2000 and 2003 (see paragraph 17 above). The applicant chose, as part of his defence strategy, to provide an expert report for that period, which was based on his own data as regards income and expenses during that distant period. This prompted the IQC to respond to these arguments.

107. The Court notes, next, that the applicant's judicial career started in 1992 and continued uninterruptedly until the vetting proceedings in 2018. Since 2003 he had been subject to annual declarations of assets (see paragraphs 6 and 68 above). The findings against him were based both on the disclosure made in his vetting declaration of assets and prior asset declarations filed by him and his wife. The objective of the evaluation of assets was to check the lawfulness of the source of acquisition of assets and verify the truthfulness of the vetting declaration of assets against prior annual declarations of assets. It was for this reason that the vetting bodies used as evidence prior annual declarations of assets that he had filed with HIDAACI to ensure that all assets, including the lawful financial sources which had been used for their acquisition, had been accurately disclosed and justified. The vetting bodies ultimately examined assets of which the underlying financial sources had been secured in the 1990s or early 2000s. However, the Court does not consider that the applicant was placed in a difficult position to justify the lawful nature of the financial sources owing to the passage of time and the potential absence of supporting documents. He provided the relevant data, and the vetting bodies took them as the basis for their assessment, even if they made different calculations based on them, particularly as to the family's saving capacity (see paragraph 102 above), and made unfavourable findings (compare *Sevdari*, cited above, § 131). The Vetting Act provided for extenuating circumstances if a person being vetted was objectively unable to submit supporting documents (see paragraph 58 above). While the applicant specified amounts allegedly spent on alteration work in the flats, he did not

seem to plead an inability to substantiate them, specifically the substantial amount in 2003, that is, when he had already been subject to the declaration, in 2004, under the Assets Disclosure Act (Law no. 9049 of 10 April 2003).

108. It follows that the vetting bodies' approach to the first component of the vetting process in the present case did not raise issues which would entail a violation of Article 6 § 1 of the Convention.

2. Background assessment

(a) The parties' submissions

(i) The applicant

109. The applicant argued that he had been refused access to information which had served as the basis for the preparation of the CISD's submission to the IQC, specifically that giving rise to a reasonable suspicion of his involvement or inappropriate contact with persons involved in organised crime. After the IQC had shifted the burden of proof, he had made a request to consult the entire case file, including all the evidence administered in the background assessment. The case file had not contained the information supporting the CISD's submission. He had then explicitly complained in his submissions before the IQC that the CISD's findings were based on information that had not been made available to him. He had then reiterated his claims in the appeal before the SAC. The SAC had dismissed that claim, merely referring to section 39 of the Vetting Act. The CISD's submission had been based on some information that had been withheld from him. He had not even been informed of the contents of that evidence and had thus been denied any opportunity to counter the allegations. The Venice Commission considered that the use of classified information was reasonable, but only on condition that the information was favourable to the vetting subject.

110. The CISD had the exclusive power to apply and lift the confidentiality of classified documents. Its decisions could not be challenged before the courts or reviewed or overridden by the vetting bodies. They had no access to those documents and could not assess them (Article Ç of the Annex to the Constitution). The vetting bodies in the applicant's case had deferred to the findings made in the CISD's submission and the work done by the working group. He had been at a clear disadvantage of not knowing the reasons for his dismissal, while bearing the burden of proof at the conclusion of the preliminary investigation. The CISD was under the direct supervision of the executive, and its director was appointed by the Prime Minister. It was exposed to the risk of political interference, as indicated by the Venice Commission.

(ii) The Government

111. The Government argued that, under section 38 of the Vetting Act, confidential information administered by public authorities could be

considered by the vetting bodies, while respecting due process. Where access to that information did not affect the safety of others or national security, information could be declassified and made available to the vetting subject. The CISD had declassified its report and "the attached information". The report had stated that the 2016 discontinuation decision was enclosed. The entire case file before the IQC had been made available to the applicant. The report had been communicated to him, and he had submitted evidence and objections to it. Before the IQC, the applicant had rebutted the findings made in the CISD's report, which proved that he had been aware of the "evidence that accompanied the report". He had not requested access to any confidential information that might be "in his file". The IQC had informed the Government in 2019 that he had not requested it to declassify any information. The vetting bodies had only made its decision on the basis of the CISD's report and the 2016 discontinuation decision. The findings on the background assessment had only concerned that decision and his contact with L.H.

(b) The Court's assessment

(i) General principles

112. The Court reiterates that there may be competing interests, such as national security or the need to protect witnesses at risk of reprisals or keep secret police methods of investigation of crime, which must be weighed against the rights of the party to criminal or other relevant proceedings. However, only measures restricting those rights which do not affect the very essence of those rights are permissible under Article 6 § 1. For that to be the case, any difficulties caused to the applicant party by a limitation of his or her rights must be sufficiently counterbalanced by the procedures followed by the judicial authorities (see, as applied under the civil limb of Article 6 § 1 of the Convention, *Regner v. the Czech Republic* [GC], no. 35289/11, §§ 148 and 151, 19 September 2017). Where evidence was withheld on public interest grounds, the Court must scrutinise the decision-making procedure to ensure that, as far as possible, it complied with the requirements to provide adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the person concerned (ibid., and *Corneschi v. Romania*, no. 21609/16, §§ 86-89, 11 January 2022, also under the civil limb of Article 6 § 1).

(ii) Application of the principles in the present case

(α) Failure to declare contact with persons involved in organised crime

113. Turning to the present case, the Court notes that in January 2017 the applicant filled in the standard background declaration form within the vetting process, denying any involvement in activities related to organised crime or having or having had inappropriate contact with persons involved in

it, within the meaning of the Vetting Act (see paragraphs 10 and 64 above). The CISD initiated the background assessment and made a submission ("report") to the IQC (see paragraph 12 above). As indicated in that submission, it was based on the applicant's "file" and input from two other specialist agencies and the Prosecutor General's Office, which was formalised in classified letters received from them. That "information obtained" gave rise to a reasonable suspicion of the applicant's involvement or inappropriate contact with persons involved in organised crime. It was stated, however, both in the vetting proceedings and before the Court, that the only document disclosed by the CISD to the IQC with its submission was the 2016 discontinuation decision. It is unclear whether the classified letters from the two agencies were submitted to the IQC. During its investigation, the IQC asked the applicant whether he had been investigated or prosecuted in the past. He provided a detailed account about the investigation in 2016 (see paragraph 16 above). The IQC's investigation findings recounted the CISD's report and stated that the CISD had carried out an investigation based on statements and other data (see paragraph 17 above). The IQC shifted the burden of proof onto the applicant. He made comments, noting that no evidence, except for the CISD's submission and the 2016 discontinuation decision, had been provided to him (see paragraph 19 above). The IQC then dismissed him from office for, *inter alia*, failure to disclose the 2016 investigation and on account of the other findings in the CISD's submission.

114. The IQC endorsed as well-established, albeit without any further reasoning, the CISD's findings as to the applicant's "inclination towards criminal activities" and that he could be "easily put under pressure by criminal structures". That endorsement was made on the basis that the IQC had not determined otherwise during its own investigation and based on the document(s) before it, and because the applicant had not disproven those findings. In the absence of any further particulars (in particular, about matters relating to any "criminal structures" and the context of organised crime, whether in relation to any contact with L.H. or otherwise) the IQC seemed to impose an excessive, if not impossible, burden of proof on the applicant in the circumstances of the case. At the very least, nothing in the IQC's reasoning suggests that he had been involved in what could reasonably be related to, for instance, concerted activities within or for the benefit of a criminal group.

115. The vetting bodies found it established that the applicant had, at some undefined period, "inappropriate contact" with "persons" involved in organised crime. However, the CISD only referred to his contact with one person, L.H. The details of contact with other persons and the circumstances relating to those instances of "organised crime" were not disclosed to the applicant. The Court considers that he was therefore in no position to rebut either the factual allegations or their legal classification for the purposes of the vetting process. It is noted in this connection that the vetting bodies made

no findings relating to the applicant's reply to the IQC's additional questions in March 2018 about his acquaintance with certain persons (see paragraph 16 above) or to any circumstances arising in the investigation in respect of L.H.'s husband (see paragraph 7 above).

116. Furthermore, the SAC's reference to section 39 of the Vetting Act on the legal grounds for refusing access to information or documents could be reasonably understood as indicating that they existed and were considered by the CISD and/or were presented to the IQC and/or SAC panel but were not disclosed to the applicant (see paragraphs 44-45 above). The SAC stated nothing in relation to any circumstances which could prompt recourse to section 39 in the present case, or suggest that it was applied in a manner consistent with the applicant's rights under Article 6 § 1 of the Convention (compare *Regner*, §§ 150-61, and *Corneschi*, §§ 90-113, both cited above; see also *Turek v. Slovakia*, no. 57986/00, § 115, ECHR 2006-II (extracts), and *Bobek v. Poland*, no. 68761/01, § 57, 17 July 2007). The SAC's reasoning does not suggest that it considered, for example, whether concerns about the protection of a specific source could be addressed by redacting, to the extent possible, identities or other elements that could reveal the source.

117. The SAC also referred to Article A § 1 of the Annex to the Constitution, which allowed for limitations on a vetting subject's constitutional rights, in accordance with Article 17 of the Constitution. It is noted, however, that that provision provides that constitutional rights may be restricted by law in the public interest, and that such restrictions cannot go beyond what is permissible under the Convention. The SAC adduced no reasoning as to the necessity and proportionality of any such restrictions or their compliance with Article 6 of the Convention – as regards access to classified documents or classification under section 3 of the Vetting Act (see below) – in the specific circumstances of the present case.

118. To sum up, in so far as the background assessment relied on the applicant's alleged failure to declare contacts with persons involved in organised crime, the Court finds that the applicant was not afforded an adequate opportunity to oppose the findings made by the vetting bodies and to plead his case in an effective manner (see *Xhoxhaj*, cited above, §§ 326 and 328).

(β) Contact with L.H. and the applicant's own criminal proceedings, and failure to declare them

119. In 2016 the applicant, then a Supreme Court judge, and L.H., his friend with no prior criminal record, were briefly investigated for corruption. The investigation was discontinued for lack of a criminal offence (see paragraph 7 above). According to the SAC, unless a person under criminal investigation for a listed offence was declared "not guilty" by a final court decision, that person was to be considered "involved" in "organised crime" and "inappropriate" contact with him or her had to be disclosed in the vetting

declaration. Failure to disclose or the contact itself could serve as a legal basis for dismissal from office. However, the Court cannot but note in this connection that the investigation was swiftly discontinued by a prosecutor because the impugned act was not a criminal offence (see paragraphs 7 and 66 above). It was concluded that the applicant's contact with L.H. was social and that there were no corruptive interests involved. The prosecutor did not refer to any other ground under Article 328 of the Criminal Code and which was also listed in section 3 of the Vetting Act as requiring the person concerned to be considered "involved in organised crime" for the purpose of the vetting process (see paragraph 59 above). It is noted that the applicant referred to what appeared to be a binding interpretation of the law by the Supreme Court in a seemingly relevant legal context.

120. However, in so far as the SAC was the ultimate authority for the interpretation of the Vetting Act, it was indispensable to provide adequate reasoning with due regard to solid evidence and other relevant considerations (see, *mutatis mutandis*, *Mihalache v. Romania* [GC], no. 54012/10, §§ 93-98 and 102-16, 8 July 2019, and the cases cited therein, and *Allen v. the United Kingdom* [GC], no. 25424/09, §§ 94-102, ECHR 2013) on that fundamental aspect of the vetting case. The Court notes that, ultimately, the applicant had nothing to answer for in relation to the criminal proceedings terminated in 2016, and that SAC's reasoning appears therefore to have been excessively formalistic in a context that called for caution in applying the relevant requirements of national law.

121. Disciplinary proceedings in respect of judges may have serious consequences for their lives and careers, and may result in dismissal from office, which is a very serious outcome which carries a significant degree of stigma. The manner in which judicial review proceedings are carried out must be appropriate to the subject-matter of the dispute, that is to say, in the instant case, to their disciplinary nature (see, *mutatis mutandis*, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 196, 6 November 2018). This consideration applies with even greater force to disciplinary proceedings against judges, who must enjoy the respect that is necessary for the performance of their duties (ibid.), and bearing in mind that the principle of the rule of law encompasses the principle of irremovability of judges during their term of office (see *Baka v. Hungary* [GC], no. 20261/12, § 172, 23 June 2016, and *Besnik Cani*, cited above, § 88). When a State initiates such disciplinary proceedings, public confidence in the functioning and independence of the judiciary is at stake; in a democratic State, this confidence guarantees the very existence of the rule of law (see *Ramos Nunes de Carvalho e Sá*, cited above, § 196).

122. In view of the above, the Court finds that the assessment of the applicant's contacts with L.H. and of the criminal proceedings of 2016 also raised serious concerns as to his right to a fair trial.

(γ) Conclusion

123. Considering the above-mentioned findings cumulatively, the Court concludes that the vetting bodies' approach to the assessment of the second component of the vetting process, resulting in far-reaching findings deemed to be sufficient for dismissal from office, did not comply with the fairness requirement of Article 6 § 1 of the Convention in the present case. There has therefore been a violation of that Article in relation to the second component of the vetting process.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

124. The applicant complained that there had been a breach of Article 8 of the Convention on account of his dismissal from office and because of the provisions of the Lawyers Act adversely affecting his ability to practise as an advocate.

125. The relevant parts of Article 8 read 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. Scope of the complaint

126. In his application to the Court, the applicant raised two complaints under Article 8 of the Convention: (i) about his dismissal from office; and (ii) about the ban, under the applicable legislation, on his practising law as a private lawyer (advocate) following his dismissal from office.

127. In his observations submitted in 2020, the applicant also mentioned that he was banned from re-entering the justice system, from applying for employment in the civil service or from acting as an expert. The applicant has not submitted any complaints in that regard in his application form, and they are not an elaboration of his original complaints, on which the parties have commented, but constitute new matters which were not covered in the original application (see *Vool and Toomik v. Estonia*, nos. 7613/18 and 12222/18, §§ 60-61, 29 March 2022). Thus, the Court is not called upon to examine those matters in the present case separately (see, however, paragraph 162 below).

128. It follows that the scope of the complaint before the Court is limited to the vetting proceedings which resulted in the SAC's decision of 18 April 2019 and the alleged ban on the applicant practising law as an advocate (member of the Bar).

B. Admissibility

1. As regards the applicant's dismissal from office

129. The Government argued that in the vetting case the applicant had made no specific argument relating to his private life. The outcome of that case had had no consequences in terms of his "inner circle" and the development of his relationships with others. He had an advocate's licence and could practise at any time. He also had a doctorate degree, enabling him to pursue a career in the academic field. The applicant had not proven that after the vetting proceedings his income had reduced, or that his standard of living had been affected.

130. The applicant argued that his dismissal from office had affected his and his family's financial situation, because of the loss of his salary and future pension as well as the opportunity to establish and maintain professional relationships. He had been dismissed from his prestigious post as a Supreme Court judge, without any possibility of exercising judicial functions ever again. Employment opportunities in the legal field that corresponded to his professional qualifications and experience had been reduced to an extent which made practising law impossible. His dismissal had encroached upon his professional and social reputation in such a way that it had seriously affected his esteem among others. He had been criticised and dismissed from office on account of his performance as a judge. The reasons for the dismissal suggested that his professional reputation had been affected. The vetting bodies' decisions had accused him of intentional misconduct and criminal behaviour, criminal tendencies and inappropriate contact with persons involved in organised crime. His morals had been called into question. He had been at the peak of his career following over two decades of personal dedication and professional commitment. In the eyes of society, he continued to be stigmatised as an individual unworthy to carry out judicial duties. That had affected his ability to develop relationships with the outside world – employment-related or otherwise – to a very significant degree and had created serious difficulties for leading a normal personal life and earning a living.

131. For the reasons stated in *Xhoxhaj* (cited above, §§ 362-66), the Court dismisses the Government's arguments and notes that this complaint 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. As regards the alleged ban on practising as an advocate

132. The Government stated that the Albanian Chamber of Advocates was a legal entity, specifically a public entity exercising its activity independently. Under the Code of Administrative Procedure and the Administrative Courts Act (Law no. 49/2012), public entities performed

public functions and their activity was self-regulated. A decision by the Chamber could be challenged before the administrative courts and then before the Constitutional Court. It was apparent from the national register that nearly all the officials dismissed through the vetting process had then practised as advocates. The applicant had been and remained registered in the register of non-practising advocates.

133. The applicant argued that while section 13(2)(f) of the Lawyers Act did not explicitly refer to the vetting process, its wording was clear and provided that the judges and prosecutors who had been dismissed in the vetting process would be unable to enrol as advocates or, if they had already enrolled prior to the vetting proceedings in respect of them, would be disbarred, without any possibility of enrolling ever again. The Lawyers Act itself violated his rights, even in the absence of an individual measure, because he belonged to a class of people who risked being directly affected by that legislation.

134. The Court notes that at no point during the four years since the end of the vetting proceedings in April 2019 has the applicant been prevented from practising as an advocate. Having regard to its findings in respect of a similar complaint in *Xhoxhaj* (cited above, §§ 371-73), it concludes that his complaint is incompatible *ratione personae* with the provisions of the Convention and must be dismissed in accordance with Article 35 §§ 3 (a) and 4.

C. Merits

135. There has been an interference with the applicant's right to respect for his private life on account of his dismissal from office (see *Xhoxhaj*, cited above, § 377). An interference with a person's right to respect for private life will be in breach of Article 8 of the Convention unless it can be justified under Article 8 § 2 as being in accordance with the law, pursuing one or more of the legitimate aims listed therein, and being necessary in a democratic society to achieve the aim or aims concerned.

136. The Court notes that the SAC's assessment under each of three components of the vetting process was concluded with a finding under one of the paragraphs of section 61 concerning grounds for dismissal (see paragraphs 27, 28, 31, 33, 35 and 46-47 above). It follows that the SAC considered that its conclusion under each component was *per se* sufficient to justify the applicant's dismissal from office.

137. In view of the above, and having regard to its findings under Article 6 of the Convention, the Court will first determine whether the findings under the first component (the assets assessment) justified the applicant's dismissal from office under Article 8 § 2, as being in accordance with the law, pursuing one or more of the legitimate aims listed therein, and being necessary in a democratic society to achieve the aim or aims concerned.

1. In accordance with the law

(a) The parties' submissions

(i) The applicant

138. "Insufficient disclosure" within the meaning of section 61(3) of the Vetting Act, as a ground for dismissal, was related to section 33, stating that the assets assessment ascertained whether a vetting subject had wilfully failed to disclose assets or had more assets than could be legitimately explained. Vetting subjects had to "declare" all the assets and the related sources of income and to "justify" them, by submitting the relevant documents so as to credibly explain their lawful origin. Failure to justify could not result in dismissal under section 61(3). "Insufficient disclosure" only resulted from hiding assets or giving a false statement. Under Article D § 5 of the Annex to the Constitution, dismissal would be imposed on anyone who took steps to inaccurately disclose or hide assets. That was not the case when a vetting subject (i) declared the asset and the source of income but was unable to document them or their legitimacy, or when the declaration of assets contained minor inaccuracies or inconsistencies; or (ii) did not declare a certain asset because there was no obligation to do so under the legislation in force at the time. The legislation failed to define when a disclosure of assets was "insufficient" and when it reached the requisite threshold of gravity to justify dismissal from office. The vetting bodies enjoyed an unfettered discretion in the interpretation of the concepts mentioned above. In many other cases, they had applied a more lenient approach *vis-à-vis* inaccuracies in the declarations of assets or failure to declare them.

139. The vetting bodies had improperly sanctioned the applicant for "insufficient disclosure" for, *inter alia*, having declared a higher value for the flats in his vetting declaration, and for having mistakenly filled out periodic annual declarations as to the ownership of a garage. Under sections 30-33 and 61(3) of the Vetting Act and Article D of the Annex to the Constitution, the vetting process ascertained the veracity of the statements contained in the vetting declaration, not past asset declarations. HIDAACI had positively assessed them; the Vetting Act did not empower the vetting bodies to review them anew. In many cases, the vetting bodies or members thereof had argued that inaccuracies in periodic declarations did not justify dismissal from office.

(ii) The Government

140. The competencies of the vetting bodies, the parties' rights and the re-evaluation criteria were directly provided for in the Constitution and developed in the Vetting Act. They clearly described the vetting process as a re-evaluation process rather than ordinary disciplinary proceedings, and provided for three outcomes (confirmation in office, dismissal from office or

mandatory training). The vetting process was to be carried out on the basis of legal instruments already being applied by authorities. The assets assessment followed the same re-evaluation criteria as applied by HIDAACI. A manual had been drafted on how to complete the vetting declaration of assets. The object of the assessment under section 30 of the Vetting Act included verification of the declarations of assets, an audit of the declarations of assets, verification of the legitimacy of the sources used for their creation and the fulfilment of financial obligations. Pursuant to section 33, the vetting bodies assessed whether the declaration was accurate and in accordance with the law, whether the vetting subject had legitimate resources and whether they were insufficient to justify the assets, whether he or she had concealed an asset or made a false declaration or was in a situation of conflict of interest. Section 61(3) provided for dismissal from office for insufficient declaration under section 33. Insufficient declaration meant a lack of financial resources, concealment of assets, a false declaration or a conflict of interest. Inaccuracies in previous declarations were not the object of the vetting process and were not a ground for dismissal. Those declarations only served to follow the progress and accuracy of disclosure and to draw conclusions about the legitimacy of assets or sufficiency of the disclosure. The applicant had only been assessed for the properties of which he had then possessed and as to their legitimacy, which included payment of taxes. The ground for dismissal under section 61(1) was not the only legal basis for dismissal. The ground under section 61(3) was independent.

(b) The Court's assessment

141. 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, read together with section 33(5) and Article D of the Annex to the Constitution, had been in accordance with the law within the meaning of Article 8 § 2 of the Convention (see also *Sevdari*, cited above, § 75).

142. The Court notes that the thrust of the applicant's submissions in the present case is largely similar to the arguments raised before it in the above-mentioned cases. In his case the SAC referred to the same provisions of the Vetting Act in respect of the assets assessment. Before the Court the applicant put forward his own interpretation of those legal provisions, which differed from the one adopted by the vetting bodies in his case, and argued, in substance, that their interpretation of the law had been arbitrary or manifestly unreasonable. Having examined the parties' submissions and the available material, the Court considers that in the present case the vetting bodies' interpretation of the legal provisions on which the applicant's dismissal was based was not arbitrary or manifestly unreasonable (see *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 160, 5 April 2022 ; *Valdís Fjölnisdóttir and Others v. Iceland*, no. 71552/17, § 64, 18 May 2021; and *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16,

§§ 108-09, 26 March 2020; and *Juszczyszyn v. Poland*, no. 35599/20, § 264, 6 October 2022).

143. In particular, the SAC considered that even though the applicant had declared a garage acquired in 2007 in the vetting declaration in 2017, he had not declared it in the contemporaneous annual declaration(s) and thus made an "inaccurate declaration", thereby violating Article D § 5 of the Annex to the Constitution (see paragraphs 39 and 53 above). It provides that if the person to be vetted does not file the (vetting) declaration within the time-limit prescribed by law, he or she is dismissed from office. It also provides that if the person being vetted endeavours to conceal or make an inaccurate disclosure of an asset, a presumption in favour of dismissal from office will apply. While the first part of that provision clearly refers to the vetting subject's legal obligation at the time of filing a vetting declaration, the second seems to allow for a wider interpretation such as failure to declare an asset at the time it was acquired. The SAC's interpretation of the law does not appear to have been arbitrary or manifestly unreasonable.

144. The applicant's remaining arguments at this juncture concern the application of those legal provisions, as interpreted by the vetting bodies, to the circumstances of his case as established by them and concern the allegedly disproportionate effects of that interpretation. This matter is related to the assessment below of whether the interference was necessary in a democratic society (compare *Centre for Democracy and the Rule of Law*, cited above, § 109).

145. The Court concludes that the interference with the applicant's right to respect for private life was in accordance with the law, as required by Article 8 § 2 of the Convention (see, in the same vein, *Xhoxhaj*, cited above, §§ 385-86; *Sevdari*, cited above, §§ 70-75; and *Nikëhasani v. Albania*, no. 58997/18, §§ 99-103, 13 December 2022).

2. Legitimate aim

146. The parties' submissions are similar to those in *Xhoxhaj* (cited above, §§ 389-90).

147. Noting the findings in *Xhoxhaj* (cited above, §§ 391-93), the Court sees no reason to doubt that the aims pursued by the Vetting Act in general, and the interference in the present case (the vetting of a Supreme Court judge) were consistent with the interests of national security, public safety and the protection of the rights and freedoms of others, as listed in Article 8 § 2 of the Convention.

3. Necessary in a democratic society

(a) The parties' submissions

148. The applicant argued that the legislation laid down no rules in accordance with the principle of proportionality, including an appropriate

scale of sanctions. The statutory sanctions (suspension from duty for a period of one year or dismissal from office) left little room for disciplining a judge on a proportionate basis and for balancing the competing interests on the facts of each case. His dismissal had been disproportionate to the disciplinary breaches on which it had been based, such as his overzealous declaration of a higher value of the properties in Tirana and Shkodër, minor formal mistakes in annual asset declarations and failure to justify some renovation work and part of the family savings. The accusations had concerned matters that had occurred decades before the vetting process. He had disclosed all the assets in the vetting declaration.

149. The Government argued that the applicant's dismissal from office had been necessary in a democratic society and proportionate to the aims pursued. In their view, the vetting bodies had carried out a thorough assessment of all aspects of the case and the decision-making process had been adequate.

(b) The Court's assessment

150. The Court has previously considered, within its assessment of the necessity requirement, that since it is in the first place for the national authorities, and notably the courts, to interpret domestic law, unless the interpretation is arbitrary or manifestly unreasonable, its role is limited to verifying compatibility with the Convention of the effects of such an interpretation (see *Xhoxhaj*, cited above, § 407; compare *Lesław Wójcik v. Poland*, no. 66424/09, §§ 125 and 134, 1 July 2021, in the context of Article 8 of the Convention).

151. Having said this, the Court also reiterates that dismissal from office 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 (see *Xhoxhaj*, cited above, § 403). An 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 (ibid., § 402).

152. While it is for the national authorities to make the initial assessment of necessity, the final evaluation as to whether the reasons adduced for the interference are relevant and sufficient remains subject to review by the Court for conformity with the requirements of the Convention (ibid.). The Court has to determine whether the vetting bodies overstepped the respondent State's margin of appreciation when they decided to dismiss the applicant from office. It will examine whether they carried out an individualised assessment of the factors which led to his dismissal from office on account of the assets assessment.

153. The Court reiterates in this connection 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. 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 (compare with *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 (see *Nikëhasani*, § 117, and *Sevdari*, § 85, both cited above).

154. For instance, the Court notes that the SAC considered that the applicant's dismissal from office was justified on account of the non-declaration over the years, until the vetting declaration in 2017, of a garage acquired and formally registered by his wife in 2007, when the family had a positive financial balance and while no question thus arose as to the legality or sufficiency of resources or as to concealment of that asset (see paragraphs 39 and 143 above).

155. At the same time, the Court notes that the assessment focused on other, more substantial, assets (flats) which were then used to purchase subsequent assets declared in the vetting declaration. The vetting bodies considered that, having regard to, *inter alia*, the declared lawful income and the basic living expenses of the family, the applicant had had no saving capacity and had had a negative balance for 1992-2003, that is, the period which was relevant for the purchase of two flats in 2000 and 2003. In addition, the vetting bodies expressed serious doubts about the real extent of the expenses incurred to make those flats habitable. The Court considers that the vetting bodies' approach was not arbitrary or manifestly unreasonable in that regard (see also paragraph 102 above).

156. Thus, while the assets owned or possessed at the time of the vetting declaration of assets were not in question in the vetting process *per se*, the sources which were used, at least in part, to purchase them raised issues in terms of the lawful origin and financial propriety. It appears that the proceeds from the sale of the flats acquired before the vetting process (in 2000 and 2003) and family savings over the years were then used to purchase other property. Thus, at the applicant's request, the vetting bodies examined his and his wife's financial situation pertaining to the periods when those flats had been acquired, that is, prior to 2000 and 2003 respectively. The applicant had an opportunity to prove the lawful sources used for their acquisition,

including as regards the preliminary findings on the apparent disparity between the income, living and related expenses and the non-negligeable savings declared to have been used to acquire the flats at that time. Under the Vetting Act, where a vetting subject was unable to present the document which justified the legitimacy of the creation of an asset, they had to certify to the vetting bodies that the document was missing, lost or could not be reproduced or obtained in another way (see paragraphs 58 and 107 above). In the present case, the applicant appears to have taken a different course of action, in so far as he adduced an expert report containing data on his financial situation in 1992-2002. In any event, the vetting bodies in their calculations adopted a minimum level of living costs of EUR 3 per day per person, which does not appear to have been excessively high.

157. Notably, when considering the applicant's financial propriety solely for the purposes of the vetting process (that is, outside any criminal-law context), the SAC drew reasonable inferences as to the circumstances concerning the declared and real values of the flats purchased by the applicant, then a District Court judge, in 2000 and 2003 and concerning payment of the relevant tax (compare *Phillips v. the United Kingdom*, no. 41087/98, § 53, ECHR 2001-VII; *Grayson and Barnham v. the United Kingdom*, nos. 19955/05 and 15085/06, §§ 41-42, 23 September 2008; and *Polyakh and Others v. Ukraine*, nos. 58812/15 and 4 others, § 296, 17 October 2019). Lastly, the SAC considered that the disparity between the applicant's lawful income and expenditure in the period after 2003 was also substantial and unjustified, on account of the negative balance for several years (see paragraph 41 above).

158. Having examined the applicant's allegations, the Court has identified no serious shortcomings in the decision-making process by which the above-mentioned factual findings were reached at national level (see also paragraph 108 above). Those findings and the interpretation of national law do not appear to have been arbitrary or manifestly unreasonable. The vetting bodies considered that the findings relating to the assets assessment justified the applicant's dismissal from office. Having examined the available material, the Court has no reason to depart from those conclusions. It considers that the reasons adduced by the vetting bodies to justify his dismissal from office under this heading were both relevant and sufficient, and that in the circumstances of the case it was proportionate to the legitimate aims under Article 8 of the Convention (see paragraph 147 above).

159. Thus, irrespective of the procedural shortcomings identified under Article 6 of the Convention in relation to the background assessment (see paragraph 123 above), the Court considers that the applicant's dismissal from office was justified as necessary in a democratic society under Article 8 of the Convention on account of the unfavourable assets and financial integrity assessment.

160. In view of the above findings, there is no need to determine whether, in addition to that unfavourable assessment, the applicant's dismissal was also justified under the third component of the vetting process.

4. Conclusion

161. The Court concludes that the applicant's dismissal from office complied with the requirements of Article 8 of the Convention.

162. Lastly, as to certain repercussions relating to the findings made by the vetting bodies and the applicant's dismissal from office, the Court refers to its findings in *Xhoxhaj* (cited above, § 413) and notes that the applicant has not shown that his dismissal from office had other negative consequences or repercussions, such as being refused employment in a specific post in the civil service or prevented from carrying out specific activities as an expert. It appears that he could practise as an advocate (see paragraph 134 above).

163. There has accordingly been no breach of Article 8 of the Convention on account of the applicant's dismissal from office.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

164. Lastly, the applicant alleged that there had been a violation of Article 13 taken in conjunction with Article 8 of the Convention as regards the complaint about his dismissal from office.

165. In view of the nature and scope of the findings under Article 6 of the Convention, the Court does not find it necessary to examine the admissibility and merits of that complaint.

V. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 46 of the Convention

166. Article 46 of the Convention provides:

> "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."

167. The applicant requested that the Court require the respondent Government to adopt individual measures and argued that the only appropriate redress would be his reinstatement as a Supreme Court judge. As there were structural deficiencies in the vetting process, a reopening of the vetting case would not offer adequate redress. The domestic system did not provide appropriate guarantees against abuse and misuse of disciplinary measures to the detriment of judicial independence. There was no reason to assume that his case would be reheard in compliance with Convention. The

present case also disclosed a systemic problem calling for measures of a general character. Similar applications were pending before the Court and an influx of repetitive cases stemming from the same structural or systemic problem could be expected.

168. The Government disagreed.

169. 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 *Oleksandr Volkov* (cited above, §§ 193-95, with 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.).

170. The Court has found no violation of Article 8 of the Convention as regards the vetting bodies' findings on the assets assessment (see paragraph 163 above). It has also examined, for the first time, a complaint under Article 6 of the Convention as regards the background assessment and has found a violation of that provision on account of certain shortcomings arising on the specific facts of the present case (see paragraph 123 above). In view of its jurisdiction and the nature and scope of the violation found, the Court refuses the applicant's request that the Court require the Government to reinstate him (see *Besnik Cani*, cited above, § 150). The Court does not consider it appropriate to exceptionally indicate any general measures that may be taken to put an end to the violation in question (contrast *Oleksandr Volkov*, cited above, §§ 199-202).

B. Article 41 of the Convention

171. 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."

1. Damage

172. The applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage: EUR 16,239 in respect of pecuniary damage on account of loss of salary between July 2018 and November 2020; and unspecified amounts corresponding to the salary, allowances and pension contributions he would have been entitled to receive from his dismissal until full reinstatement, or if not reinstated, corresponding to the salary he would have

been entitled to receive until retirement age and to the retirement pension he would be entitled to receive on the basis of the average life expectancy.

173. The Government contested the claims.

174. The Court has found a violation of the applicant's right to a fair hearing under Article 6 § 1 of the Convention and no violation of Article 8. The Court does not discern any causal link between the procedural violation found and the pecuniary damage alleged; it therefore rejects this claim (compare *Besnik Cani*, cited above, §§ 127-29 and 134). The Court also considers that the finding of a violation of Article 6 § 1 of the Convention constitutes in itself sufficient just satisfaction as regards non-pecuniary damage in the present case (ibid., § 135).

2. Costs and expenses

175. The applicant claimed EUR 12,896 for his lawyers' fees before the Court paid under invoices issued in 2018 and 2020 by their law firm in Italy.

176. The Government stated that those unsigned invoices had not been paid and that, in view of the applicant's income, they could not be paid. In any event, the expenses were not necessary as to quantum, having regard to the usual legal costs in Albania.

177. 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. Having regard to the documents in its possession and to its case-law (see *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, §§ 167-68, 3 November 2022, and *Beeler v. Switzerland* [GC], no. 78630/12, § 128, 11 October 2022) and in so far as the claim is related to the present case and one finding of a violation, the Court awards EUR 3,500, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaints under Article 6 (in the part relating to the right to a fair hearing) and Article 8 (as regards dismissal from office) of the Convention admissible;

2. *Declares*, by a majority, the other complaints under Articles 6 and 8 of the Convention inadmissible;

3. *Holds*, unanimously, that there has been a violation of Article 6 of the Convention;

4. *Holds*, by six votes to one, that there has been no violation of Article 8 of the Convention;

5. *Holds*, by six votes to one, that there is no need to examine the complaint under Article 13 of the Convention;

6. *Holds*, by six votes to one, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;

7. *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, EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

8. *Dismisses*, by six votes to one, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy 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.
O.C.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

While I agree with points 1, 3 and 7 of the operative provisions of the judgment, as regards points 2, 4, 5, 6 and 8, rather than issuing a fully-fledged separate opinion or voting anonymously against these points, I have chosen to append this "bare statement of dissent". This is a mere statement of disagreement with part of the judgment, one of the means of expressing dissent to which judges are entitled under Rule 74 § 2 of the Rules of Court.