



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

THIRD SECTION

CASE OF NIKËHASANI v. ALBANIA

(Application no. 58997/18)

JUDGMENT

Art 8 • Private life • Justified dismissal of prosecutor from office due to serious doubts as to her financial propriety based on findings of vetting process • Proportionate lifetime ban from re-entering justice system for serious ethical violation

STRASBOURG

13 December 2022

FINAL

22/05/2023

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

In the case of Nikëhasani v. Albania,

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

Pere Pastor Vilanova, *President*,

Georgios A. Serghides,

Jolien Schukking,

Darian Pavli,

Peeter Roosma,

Ioannis Ktistakis,

Andreas Zünd, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 58997/18) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Albanian national, Ms Besa Nikëhasani (“the applicant”), on 17 December 2018;

the decision to give notice of the application to the Albanian Government (“the Government”) and to grant priority under Rule 41 of the Rules of Court;

third-party comments received from Res Publica and the European Commission, 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 22 November 2022,

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

INTRODUCTION

1. The case concerns re-evaluation proceedings in respect of the applicant, then a serving prosecutor, under Law no. 84 of 30 August 2016 (“the Vetting Act”). The proceedings resulted in her dismissal from the post.

THE FACTS

2. The applicant was born in 1971 and lives in Tirana. She was represented by Mr A. Saccucci and Ms G. Borgna, lawyers practising in Rome.

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

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

5. The applicant was appointed to the post of prosecutor in 1993. Following the enactment of the Assets Disclosure Act in 2003 (see paragraph 24 below), she started to submit annual declarations of assets to

the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (“HIDAACI”).

I. VETTING PROCESS IN ALBANIA

6. In 2016 Albania embarked on comprehensive justice system reforms, which led to amendments to the Constitution and the enactment of a number of statutes relating to, among other things, the re-evaluation of all serving prosecutors (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 (hereinafter “the SAC”) attached to the Constitutional Court (jointly referred to as “the vetting bodies”). The vetting bodies were to re-evaluate each serving prosecutor on the basis of three criteria: (i) an evaluation of assets, (ii) an integrity background check aimed at determining any possible links to organised crime and (iii) an evaluation of professional competence. At the conclusion of each set of re-evaluation proceedings, the vetting bodies were to give reasoned decisions confirming in office or suspending or dismissing from office the person being vetted.

II. PROCEEDINGS IN RESPECT OF THE APPLICANT

A. Before the IQC

7. When the vetting process started, the applicant was serving as a prosecutor at the prosecutor’s office attached to the Shkodër Court of Appeal (*Prokurorisë së Gjykatës së Apelit*). In January 2017 she submitted the vetting declarations required by law. She declared, *inter alia*, the following major assets:

(a) a flat of 144 sq.m. in Tirana purchased in 2009 for 90,000 euros (EUR) with her family’s savings (*kursimet familjare*) over the years; proceeds from the sale of several plots of land in 2008 and 2010; and a bank loan of 7.1 million Albanian leks (ALL), indicated as equivalent to EUR 50,000;

(b) a flat of 76 sq.m. in Lezhë acquired under a contract in 2010 for EUR 28,000 with EUR 25,000 received in 2010 from a construction company, under an agreement, following the demolition of another dwelling in Lezhë acquired in 1998 and owned by the family; and EUR 3,000 from the family’s savings in 2009;

(c) a commercial service unit (*njësi shërbimi*) with a surface area of 150 sq.m. in Lezhë received under the above-mentioned agreement in 2011; and

(d) a Toyota vehicle purchased for EUR 19,500 in 2016 with EUR 12,000 received under a loan contract with a private individual, A.M.; EUR 4,000

received from the sale of another car under a contract in 2016; and the family's savings in 2015 and 2016.

8. Because of the applicant's candidacy for the High Prosecutorial Council, the governing body of the Prosecution branch, she was added to the priority list of persons to be vetted. On 30 November 2017 lots were drawn before the IQC for the panel which would re-evaluate the applicant.

9. HIDAACI provided the IQC with a report concerning the evaluation of assets (see paragraph 28 below), concluding that the applicant's disclosure was accurate, in compliance with the law, supported by lawful financial sources and that there was no conflict of interest, no lack of lawful financial sources to justify the assets, no concealment of assets and no false declaration.

10. The IQC proceeded with an in-depth administrative investigation in relation to one of the three re-evaluation criteria, namely the evaluation of assets, with reference to, *inter alia*, other evidence such as the applicant's prior annual declarations. On 15 December 2017 the IQC sent her a first follow-up questionnaire, requesting clarifications regarding certain assets and her children's education costs. The applicant provided the additional information within the prescribed time-limit. On 31 January 2018 the IQC sent a second follow-up questionnaire, requesting the applicant, *inter alia*, (i) to submit the contract under which the ownership of the flat in Lezhë had been acquired, with a clear indication of the year of purchase, surface area and purchase price; supporting documents (*dokumentacion provues*) as to the income used for that acquisition; the notarial deed under which the applicant had benefited from the EUR 25,000 received from the construction company; and (ii) to provide information on the exact date she had received the proceeds from the sale of the plots of land by her mother-in-law used for the same purchase. The applicant replied on 8 February 2018 and submitted several documents. On 13 February 2018 the IQC sent a third follow-up questionnaire, requesting additional information. The applicant replied on 20 February 2018.

11. On 13 March 2018 the IQC concluded the administrative investigation. On 14 March 2018 it informed the applicant of the conclusion of the investigation based solely on the assets assessment and provided her with its preliminary findings together with HIDAACI's report and other documents from the case file.

12. The IQC's preliminary findings were as follows.

(a) As regards the flat in Tirana, the applicant had not listed two garages in her vetting declaration and had not proven the source of ALL 752,880 used to pay part of the purchase price and that she had had sufficient savings to pay the remainder.

(b) The applicant had had insufficient income to acquire the flat and service unit in Lezhë, and to justify the purchase of the vehicle in 2016.

The IQC shifted the burden of proof to the applicant in relation to those assets and issues, and gave her a twenty-day time-limit to submit arguments in response and supporting documents.

13. On 3 April 2018 the applicant filed her submissions, addressing the issues earmarked by the IQC and providing documents in support of her arguments. She explained that the garages had not been included in the vetting declaration owing to a mistake and that there had been no intention to conceal those assets, as unequivocally proven by the fact that she had submitted a complete copy of the purchase agreement which expressly mentioned the garages. She clarified that most of the purchase price had been paid for with the bank loan and the remainder with savings, including the proceeds of the sale of the plots of land owned by her mother-in-law. She explained that those proceeds had been received by her mother-in-law in 2008. As to the properties in Lezhë, the applicant explained that her family had bought a flat in the city in 1998. Owing to issues with the construction permit, the building had been demolished. The construction company had compensated her family with EUR 25,000, which had then been used to buy another flat, and with ownership of the service unit. In relation to the purchase of the car in 2016, the applicant explained that it had been paid for with savings and a loan from her husband's friend, A.M.

14. On 10 April 2018 the IQC informed the applicant that a hearing was scheduled for 17 April 2018. At the hearing, she provided further explanations regarding the issues raised by the IQC.

15. By decision no. 15 of 20 April 2018, the IQC dismissed the applicant from office for having declared total assets with a value of more than twice her legitimate income. According to the IQC, she had made inaccurate statements in her annual declarations and her vetting declaration; failed to prove lawful sources to justify certain assets, attempting to retrospectively justify them with recently drawn up documents; and concealed assets in small amounts. The IQC made the following findings.

(a) While the applicant had submitted a complete copy of the purchase agreement in respect of the flat in Tirana, she had nonetheless failed to list two garages in her vetting declaration. She had not provided evidence that in 2008 her mother-in-law had given her or her husband the sum of ALL 752,880, the proceeds of the sale of the two plots of land subsequently used to pay part of the purchase price for that flat. She had therefore made a false statement. On the basis of an estimate of expenses incurred in 2004-11 by her family (including three children and, possibly, the mother-in-law residing with the family) and taking into account other expenses such as travel to her place of work in Shkodër, there were "reasonable doubts" that ALL 108,750 per month for the family's living expenses (as asserted by the applicant) was enough, and it was even less likely that the applicant could have accrued savings of ALL 2,019,700 to pay the remainder of the purchase price.

(b) As to the flat and service unit in Lezhë, while the applicant had declared EUR 25,000 in her 2010 annual declaration, the fact remained that she had no document to prove (in accordance with the requirements of the Civil Code) ownership of the flat which had been demolished and in relation to which she had then acquired those properties. The notarial agreement signed in 2011 between the construction company and the applicant's husband, laying out the terms of compensation for the demolished flat, was insufficient to prove that she had had title to it. It was also noted that she had not declared that first flat in her first annual declaration, which was inexcusable for a prosecutor with some ten years' service at the time; that she had provided inconsistent information in 2004 and in the vetting declaration in 2017 about its year of purchase, value, surface area and the sources of income used for its acquisition; and that there had been a failure to declare ALL 2,100,000 in relation to that flat.

(c) After the Toyota vehicle had been imported to Albania with a declared value of EUR 23,900 and the relevant tax had been paid on that amount, two weeks later, in August 2016, the applicant's husband had paid EUR 19,500 to purchase it. In the absence of any convincing explanation, that could amount to an unjustified transaction. The sum of EUR 4,000 from the sale of the old car had only been received in September 2016. A.M. had made contradictory statements about the origin of EUR 12,000 he had lent the applicant's husband and, according to the available evidence, had not had sufficient legal income to do so.

B. Before the SAC

16. On 4 June 2018 the applicant lodged an appeal with the SAC, arguing as follows.

(a) At no stage of the proceedings did the IQC raise the issue that she had declared assets amounting to more than twice her lawful income, so the final decision had taken her by surprise. She claimed a breach of her fair trial rights on account of her inability to defend herself in relation to that issue, which was decisive for the outcome of the case.

(b) The IQC disregarded HIDAACI's findings and carried out its own economic and financial assessment of her wealth without having the requisite expertise to do so. The conclusions reached by the IQC in that regard were unsubstantiated.

(c) Her dismissal from office was manifestly disproportionate, considering the lack of any intention to conceal assets and the minor issues in her vetting declaration.

(d) The IQC's findings regarding the gift from her mother-in-law were mistaken. The sales agreement for the plots of land stated that her mother-in-law had received that money in 2008. That money was subsequently given to

the applicant and her husband, as proven by the fact that she had declared it in her annual asset declarations from 2008 onwards.

(e) The properties in Lezhë had been acquired following the settlement concluded with the construction company in relation to the demolished flat she had previously owned. In 2010 her husband and the company had concluded a preliminary settlement, following which he had received EUR 25,000 in compensation. That agreement had been formalised in a written document in 2011, which acknowledged payment of the above amount and added, as further compensation, ownership of the service unit.

(f) The IQC had placed an unreasonable burden upon her of proving that another person, A.M., had had legitimate income to lend her a small sum to purchase the second-hand vehicle.

17. The applicant submitted additional evidence in support of her pleas. It appears that she submitted a request to have documentary evidence admitted to the file as regards the proceeds of the sale of the two plots of land and ownership of the demolished flat in Lezhë. She also presented an expert report containing a calculation of her income and expenses over the years, with a view to refuting the IQC's findings.

18. By a procedural decision, the SAC dismissed her request to admit new evidence because no adequate reasons had been provided as to why she had failed to present it before the IQC, and, in any event, following a preliminary assessment, it was seemingly irrelevant for deciding the appeal. According to the applicant, she was not notified of that procedural decision during the appeal proceedings.

19. The applicant filed further submissions on 20 and 28 June 2018. On 7 September 2018 she adduced further evidence, including a notarised statement by A.M. and a bank receipt, with a view to proving that she had repaid a substantial part of that loan. It appears that the SAC did not rule on her request at that time.

20. By decision no. 6 of 12 September 2018, the SAC panel upheld the decision of 20 April 2018.

(a) It stated that it had rejected the applicant's requests to introduce additional evidence. It dismissed her contention that she had not been notified by the IQC of the "accusation" of having assets of an amount more than double her legitimate income because that conclusion was a foreseeable consequence of the issues earmarked as problematic at the end of the administrative investigation and could only be reached as the final outcome of the evaluation of the assets. The SAC stated that the IQC's decision to disregard HIDAACI's findings and rely on its own understanding of the evidence was legitimate. It further held that inconsistencies or serious omissions in the vetting declaration could justify dismissal from office even in the absence of a subjective element of liability, and that the IQC's decision to close the preliminary investigation only in respect of the assets was legitimate.

(b) The SAC upheld the conclusions reached by the IQC on the merits: that the applicant's vetting declaration was not accurate and that she had repeatedly committed errors and inaccuracies in her statements; that there were insufficient lawful financial resources to justify the acquisition of the major assets; that there was a lack of lawful financial resources for the assets she owned, and a lack of legal documentation regarding ownership of the resources claimed; and that she had concealed assets and made a false statement.

(c) The SAC upheld the IQC's finding that the overall wealth twice exceeded the income assessed as lawful on the basis of all the explanations and evidence presented by the applicant, and all the data collected during the investigation and disclosed to her. That conclusion was the logical consequence of the reasoning relating to each asset and of the comparison between the amount of wealth accumulated over the years and declared in the vetting declaration in 2017 and the assessment of the lawfulness of the sources of income. The applicable constitutional and other provisions did not link the insufficiency of the declaration to the subjective elements of intent to conceal assets. The applicant had to convincingly explain the legitimate source of assets and income and could not conceal, or inaccurately present assets owned, possessed or used. Under section 4 of the Vetting Act, the decision could be made based on one or more criteria or an overall evaluation of all three criteria. Having started the investigation for all three criteria and having completed the part for the wealth criterion, the IQC had regard to the probative value of the evidence gathered and decided to limit the assessment to that criterion. The IQC had shifted the burden of proof to the applicant, who was (made) aware that that only concerned the wealth assessment. The constitutional and other relevant provisions provided for disciplinary measures, even based on one criterion.

21. The SAC panel made the following findings in relation to the main assets.

(a) The flat in Tirana had been declared as purchased for the equivalent of EUR 90,000 (ALL 12,345,300), paid for with the family's savings over the years, proceeds from the sale of the plots of land and a bank loan equivalent to EUR 50,000 (ALL 7,100,000). In a contract dated December 2009 entered into by the applicant's spouse, EUR 80,000 was specified as the price for the flat and EUR 10,000 as the price for two garages. In her declaration in 2009, the applicant had only declared the flat. In 2010 she had declared both for the total amount of EUR 90,000. According to data from the Tirana Real Estate Registration Office, the two garages were registered as separate assets. The assets declaration required a detailed description of all assets accumulated over the years until the date of declaration. The IQC had therefore rightly concluded that the applicant had not been accurate in her vetting declaration as regards the two garages.

As to the proceeds from her mother-in-law's two plots of land in 2008 for ALL 376,400 each, under a notarial deed of gift dated 22 August 2013 she had given them to her son, the applicant's spouse. The applicant had submitted no (other) documentary evidence with her declaration in 2008 or assets declaration in 2017 confirming the transfer of the proceeds. The deed of gift indicated 22 August 2013 as the date of gift, which contradicted the statements made in the 2008 and 2017 declarations that the applicant and her spouse had benefited from the proceeds in 2008. Having examined a statement from the notary in March 2018, the IQC had rightly dismissed the argument asserting that the notary had made a mistake when editing the document in 2013. The notary admitted the mistake; he did this five years later (after the gift) and did so in the absence of the person gifting the sum and in violation of the applicable legislation allowing for editing when the legal document was being drafted to be signed by the parties/party. The IQC was justified in concluding that the applicant had made a false statement regarding the source of income arising from the sale of the plots of land by her mother-in-law, in an attempt to prove the lawful source of income used to purchase the flat.

As to the proceeds from the sale of another plot of land of 2,040 sq.m. in 2010 as a source of income for the flat, in her declaration in 2010 the applicant had declared that sale by her mother-in-law. However, in the 2008 declaration the remaining land owned by her was 1,500 sq.m. The applicant had not submitted any documents with her 2017 assets declaration confirming the transfer of the proceeds from her mother-in-law to her or her spouse. Her mother-in-law had not been listed in the family certificates as part of the applicant's family. Even accepting that she had been residing with them at the time, she had been free to dispose of the proceeds. It remained incumbent on the applicant to convincingly prove, under Article D § 3 of the Annex to the Constitution, that she had benefited from that money (see paragraph 27 below).

As to the family's savings, it appeared from the annual declarations that they had been used to pay for that flat as follows: EUR 10,000 in 2009, EUR 20,000 in 2010 and EUR 10,000 in 2011, totalling ALL 5,530,900.

The applicant had declared no savings between 2003 and 2006. She had declared ALL 6,365,920 in family savings between 2007 and 2011: ALL 300,000 in 2007; ALL 1,700,000 in 2008; ALL 1,300,000 in 2009; ALL 1,677,620 (ALL 1,400,000 and EUR 2,000) in 2010; and ALL 1,388,300 (ALL 1,250,000 and EUR 1,000) in 2011. However, based on the income stated by her in the annual declarations for 2007-11, less the estimated living expenses according to official data published by the Albanian Institute of Statistics for that period, the actual savings for each year had to be as follows: ALL 149,568 in 2007; ALL 2,068,880 in 2008; ALL 132,182 in 2009; minus ALL 650,918 in 2010; and minus ALL 83,141 in 2011. By comparing the savings estimated as above with those stated by

the applicant in the annual declarations, the unjustified differences were as follows: while for 2008 she had declared less than she could save in the amount of ALL 368,380, for 2007 and 2009-11 she had declared more than she could save in the following amounts: ALL 150,432 in 2007; ALL 1,167,818 in 2009; ALL 2,328,538 in 2010; and ALL 1,471,441 in 2011. The total sum of ALL 4,749,349 could therefore not be lawfully justified as savings. In other words, she could only justify the difference as a reasonable amount of savings.

(b) As to the Toyota vehicle, the SAC upheld the IQC's findings relating to the purchase price. Furthermore, according to data from the Directorate for the Prevention of Money Laundering, EUR 12,000 had been declared as having originated from A.M.'s family savings and work income. It appeared from the official data that A.M. had not had sufficient resources, on the basis of income earned from work, to lend EUR 12,000 to the applicant's family. Evidence submitted in 2018 to the effect that A.M. had received the money from his cousin in Greece contradicted the earlier data. It also seemed unconvincing that A.M. had received a loan of EUR 50,000 in 2016 to be repaid in 2017, and at the same time had lent part of that sum to the applicant's husband to be repaid in 2018. The applicant had not submitted any proof of having actually received EUR 12,000 either.

According to the contract for the sale of the old car in September 2016, the EUR 4,000 purchase price had been paid on an unspecified date. There was no appropriate proof of the actual payment of that amount, in particular prior to the purchase of the Toyota vehicle. A notarised statement drawn up in March 2018 indicated that the sum had been paid in July 2016 and that the parties had then formalised their transaction through a contract. Thus, there was no proof that the applicant had EUR 4,000 from the sale of the old car and then used it to purchase the Toyota car. She had made a false statement and failed to prove the legality of that amount.

(c) In her vetting declaration, the applicant had omitted to declare the sale of another car in 2008, thereby concealing income of ALL 200,000. In the 2007 annual declaration, she had stated that she had lent ALL 300,000 to her brother-in-law, without any documentation to prove it. In her subsequent declarations or the vetting declaration she had not mentioned the repayment of that sum, which, in any event, she had had insufficient financial capacity to lend. She had therefore made a false statement.

22. Replying to the applicant's complaint concerning the IQC's finding that her wealth more than twice exceeded the lawful income, and after assessing all the relevant facts and all the evidence relating to her and her spouse's assets from 2003 to 2016, the SAC panel concluded that the applicant had failed to prove the lawfulness of the following:

(a) the flat in Tirana – ALL 4,749,349 as that amount was above what the applicant could have reasonably saved during 2007-11, considering her lawful income.

(b) the flat in Lezhë – ALL 3,418,000 (EUR 25,000) because the applicant had never had a document confirming her (ownership) title to the demolished flat; the service unit – ALL 6,000,000 for the same reason;

(c) The Toyota vehicle – EUR 16,000 (ALL 2,184,160) because A.M. had had no financial capacity to lend EUR 12,000 and the applicant had no documentary evidence to prove the source of the EUR 4,000 used for the purchase of that car.

The SAC panel concluded that the applicant's total family wealth was ALL 24,637,339, whereas her lawfully acquired wealth was ALL 8,772,156, that is, 2.8 times less. Referring to Article D §§ 3 and 4 of the Annex of the Constitution, section 33 and section 61(1) and (3) of the Vetting Act (see paragraphs 27 and 35 below), the SAC panel upheld the disciplinary measure imposed by the IQC's decision of 20 April 2018.

III. FURTHER INFORMATION

23. After the Government were given notice of the application, in 2020 the applicant informed the Court that in 2018 she had applied to the National Chamber of Advocates (the Bar Association) seeking to "enrol" as an advocate. According to the Government, she merely filed a request for information about the relevant legislation. By a letter of 9 November 2018, the President of the Chamber replied as follows:

"Subject: a reply

In response to your request filed with us through your letter for information [*në përgjigje të kërkesës depozituar pranë nesh nëpërmjet shkresës tuaj për informacion*] regarding the exercise of the profession of advocate and the right to take the [relevant] examination, we inform you as follows.

- Under Law no. 55/2018 ..., the exercise of the profession of advocate is a right of any Albanian or foreign citizen who meets the criteria set out in sections 13 and 14 of that [Act]. The most important part expressed in those provisions regulating the right to exercise the profession of advocate is the acquisition of the title of 'advocate', which, as defined in section 13 ... must be obtained by successfully passing the qualifying examination.

- Since you have not successfully passed the re-evaluation process for judges and prosecutors [*procesin e rivlerësimit kalimtar të gjyqtarëve dhe prokurorëve*], based on section 13(2)(e) ..., you are denied by law [*juve ju është mohuar me ligj e drejta*] the right to apply for the title of 'advocate' – and, consequently, the right to exercise the profession of advocate – until such time as the disciplinary measure is extinguished under [the] special legislation."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. ALBANIAN LAW AND PRACTICE

A. Assets Disclosure Act (Law no. 9049 of 10 April 2003) as amended

24. Pursuant to section 4 of the Assets Disclosure Act, public officials are required to submit annual declarations to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest (“HIDAACI”) in respect of private interests, the sources used for their creation, as well as in respect of financial obligations, as regards, *inter alia*, 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 that match, contain, are based on or originate from family or cohabitation relationships; any declarable expenditure, worth more than ALL 300,000, carried out during the year of declaration.

25. Under section 38 of the Act, false disclosure of assets (*deklarim i rremë*) constitutes a criminal offence under the applicable criminal law (Article 257/a of the Criminal Code).

B. Vetting process

26. 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 particularly pertinent to the vetting proceedings in the present case are as follows.

1. Constitution of the Republic of Albania

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

Article D – Evaluation of assets

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

2. The person to be vetted shall file a new and detailed declaration of assets in accordance with the law. The High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest [HIDAACI] shall verify the declaration of assets and provide the [IQC] with a report concerning the lawfulness of the assets, as well as the accuracy and completeness of the asset disclosure.

3. The person being vetted shall provide convincing explanations concerning the lawful source of his or her assets and income. For the purposes of this law, assets will be considered lawful if the income has been declared and subject to the payment of 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 [*fajtor*] of a disciplinary breach [*shkeljen disiplinore*], 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 [*shkarkim*] shall apply and the person will be required to prove the contrary.”

2. *Vetting Act (Law no. 84/2016 on the transitional re-evaluation of judges and prosecutors)*

28. Section 4(1) provides that re-evaluation is carried out on the basis of three criteria: an evaluation of assets, an integrity background check and an evaluation of professional competence. Section 4(2) provides that the IQC and the SAC are the institutions that decide on the final re-evaluation of persons to be vetted, and that the decision is made based on one or more criteria, an overall evaluation of all three criteria or an overall assessment of the proceedings. Under section 4(5), both the IQC and SAC exercise their functions as independent and impartial bodies, on the basis of the principles of equality before the law, constitutionality, lawfulness, proportionality and other principles guaranteeing the right to a fair hearing of the person being vetted. Under section 4(6), the vetting bodies may apply the procedures provided for in the Code of Administrative Procedure or the Administrative Courts Act (Law no. 49/2012; see for instance, paragraph 45 below) where those procedures are not referred to in the Constitution or the Vetting Act.

29. Section 30 states that the objective of the evaluation of assets is the disclosure and audit of assets, the lawfulness of the source used for their acquisition or creation, the fulfilment of financial obligations, including private interests, of the person being vetted and related persons. Under section 31(1), the person to be vetted must file a declaration of assets with HIDAACI.

30. Section 32 states as follows:

“1. The person being vetted as well as related persons shall submit all supporting documents justifying the truthfulness of their statements concerning the lawfulness of the source [used for] the creation of assets.

2. If it is objectively impossible [*është në pamundësi objektive*] for the person being vetted to submit supporting documents proving the lawfulness of the creation of assets, the person shall certify to the vetting body that the supporting document is missing, lost or cannot be reproduced or obtained in any other way. The vetting bodies shall decide whether the absence of supporting documents is justified ...

...

4. The person being vetted and related persons, or other persons, who have been named as donors, lenders or borrowers, are obliged to prove the lawfulness of the source [used for] the creation of assets.

5. The IQC and Appeal Chamber may use as evidence prior annual asset disclosure declarations submitted to HIDAACI.”

31. Section 33 states that HIDAACI is the institution responsible for verifying the declaration of assets. Under section 33(5), HIDAACI, upon completion of the evaluation, draws up a reasoned and detailed report stating whether (i) the disclosure is accurate, in compliance with the law, supported by lawful financial sources, and whether there is any conflict of interest; (ii) there is a lack of lawful financial sources to justify the assets; (iii) there has been a concealment of assets; (iv) the person being vetted has made a false declaration; (v) the person being vetted has been involved in a conflict of interest.

32. Under section 45, the IQC, the SAC and international observers (appointed by the International Monitoring Operation) investigate and examine all facts and circumstances necessary for the re-evaluation proceedings. They may request information from any public authority. They administer documents attesting to the existence of actions, facts or another situation necessary for the conduct of the administrative investigation.

33. Under section 49(1), the vetting bodies obtain legal documents, collect statements from the person being vetted, witnesses, experts and members of the public, and receive other written documents in order to determine the facts and circumstances of each case. Under section 49(6)(a), the vetting bodies may decline to admit new evidence if, for example, obtaining it is unnecessary. Under section 49(9), the vetting bodies provide reasons for rejecting a request to obtain new evidence. Under section 51, if the person being vetted fails to submit any evidence or the evidence made available is incomplete, the vetting bodies may decide on the basis of the evidence made available to them.

34. Section 52 requires the vetting bodies to be governed by the principles of objectivity and proportionality. If they reach the conclusion that the evidence collected during the administrative investigation in accordance with section 45 has a probative value (*kanë nivelin e provueshmërisë*), the person being vetted has the burden of proof to submit evidence or give other explanations to the contrary.

35. 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 33 and 39 of this Act;

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

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

C. Status of prosecutors in Albania

1. *Constitution of the Republic of Albania*

36. Article 148 of the Constitution (as amended by Law no. 76 of 22 July 2016) reads as follows:

“1. The Prosecution Service carries out criminal prosecution and represents the accusation in court on behalf of the State. The Prosecution Service performs other duties defined by law.

2. The Prosecution Service is an independent body, which shall ensure the coordination and control of its actions as well as respect the internal independence of prosecutors to investigate and prosecute, in accordance with the law.

3. The Prosecution Service is organised and functions attached to the judiciary system [*pranë sistemit gjyqësor*] ...”

2. *Status of Judges and Prosecutors Act (Law no. 96/2016 on the status of judges and prosecutors)*

37. Section 2 determines the status of “magistrates” (*magjistratëve*), which extends to prosecutors and judges, except judges of the Constitutional Court.

38. Section 3 (“Fundamental Values”) reads as follows:

1. A magistrate shall exercise [his or her] functions in accordance with the Constitution and the law.

2. A magistrate shall exercise the functions independently, on the basis of assessment of facts and interpretation of the law, in accordance with his intrinsic conviction, free of any extraneous influences, direct or indirect, from any side or for any reason.

3. A magistrate shall not establish inappropriate connections and shall not be under the influence of the executive or legislative power. A magistrate shall take all the measures in order to be and appear to be free therefrom. A magistrate shall immediately notify the Council and the Chairperson upon identifying any attempt of interference or undue influence on him or her.

4. A magistrate shall perform the judicial functions [*funksionet gjyqësore*] in an impartial manner, without bias and without prejudice.

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

3. *Prosecutor's Office Act*

(a) **Law no. 8737 of 12 February 2001 (as amended in 2003 and 2008)**

39. Under section 17 of the former Prosecutor's Office Act (replaced by Law no. 97/2016 of 6 October 2016), to be appointed as a prosecutor, a person had to, *inter alia*, have a higher legal education, have completed the relevant course at the School of Magistrates and have high moral and professional qualities.

40. Disciplinary violations included, *inter alia*, actions that seriously discredited the prosecutor's function or that, pursuant to the law, were incompatible with it (section 32). Such violations were punishable by a reprimand, a notice with warning of dismissal from office, demotion or dismissal from office (section 33).

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

(b) **Law no. 97/2016 of 6 October 2016**

42. Section 6 ("Independence of Prosecutors") reads as follows:

"1. In exercising their functions, prosecutors shall act, submit requests and make decisions independently, based on the principles of legality, objectivity and impartiality.

2. Prosecutors shall be subject to the general written instructions of higher prosecutors, in accordance with the provisions of this Act.

3. The law guarantees the independence and the autonomy required by prosecutors to make decisions in the exercise of their constitutional and legal functions, regardless of unlawful internal or external influence from any public or private authority."

43. Under section 95, where a disciplinary violation (*shkelje disiplinore*) has been proven, the competent body imposes a disciplinary measure, in accordance with the provisions of the Civil Servants Act (Law no. 152/2013 on civil servants). Disciplinary measures include a reprimand (*vërejtje*), retention of up to one third of the full salary for up to six months, suspension of the right to promotion and dismissal from civil service (section 58 of the Civil Servants Act).

4. *Code of Prosecutors' Ethics*

44. The Code was approved on 19 June 2014 by Order no. 141 of the Prosecutor General. It contains requirements based on high standards of professional conduct of prosecutors within and outside their professional activities (*inter alia*, section 8 of the Code). Actions discrediting the prosecutor's function (*veprime qe diskreditojne rende figuren e prokurorit*), within the meaning of Article 149 of the Constitution and section 32 of the

former Prosecutor's Office Act (see paragraphs 40-41 above), constitute violation of those requirements and may give rise to disciplinary proceedings (section 17 of the Code).

D. Other relevant legislation and documents

1. Administrative Courts Act (Law no. 49/2012 on the organisation and functioning of the administrative courts)

45. Section 47 provides that an appellant may not submit new facts or request new evidence on appeal, unless he or she can demonstrate that, through no fault of his or her own, it was not possible to submit those new facts or request new evidence during the examination of the case at first instance within the time-limits prescribed by the Act.

2. Lawyers Act (Law no. 55/2018 on the lawyers' profession (Ligji për profesionin e avokatit))

46. Under section 5, a person who has not obtained the title of advocate, in accordance with the provisions of the Act, is not allowed to act as a representative of the parties or draft written documents for the parties in judicial proceedings in which the parties must be represented by an advocate on the basis of the procedural legislation in force, or to act as a representative of a party when not included in one of the categories of subjects that may represent parties in accordance with the procedural legislation in force.

47. Under section 7, while practising the profession, an advocate may not simultaneously carry out the duties of judge, prosecutor, notary, bailiff, as well as any other functions or duties in public bodies, except for teaching in higher education institutions within the country or abroad. Advocates employed by private entities may practise the profession of advocate only based on a written agreement signed for this purpose between the advocate and the private employer in order to secure the observance of the advocate's duties under the Act. A copy of the written agreement signed in accordance with section 7(2) must be filed with the National Chamber of Advocates.

48. Under section 13(1), the right to practise the profession starts at the time of obtaining the professional title of "advocate". Under section 13(2)(e), the right to acquire the title of "advocate" is open to Albanian citizens who have not been removed from duty or a public function, on account of a breach of ethical integrity, by a final decision of the competent authority, save for cases where the disciplinary measure has been extinguished in accordance with the applicable legislation.

49. Section 51 provides that the Tirana Administrative Court of First Instance is the competent court to examine administrative disputes arising against decisions of the Disciplinary Committee provided for by the Lawyers Act.

3. *Statute of the Albanian Chamber of Advocates*

50. Section 49 of the Statute of the Albanian Chamber of Advocates of 2019 sets out the deadline referred to in section 13(2)(e) of the Lawyers Act for termination of the disciplinary measure against persons who apply to obtain the title of advocate. For judges and prosecutors, who, by a final decision, are found not to pass the vetting process owing to the evaluation of assets and integrity background check, the deadline for extinguishing the disciplinary measure is five years. If the dismissal is owing to the evaluation of professional competence, that deadline is not applicable.

II. OTHER RELEVANT MATERIAL

A. Venice Commission

51. The Report on European standards as regards the independence of the judicial system: Part II: the Prosecution Service (adopted in 2010) states that the prosecutor – because he or she acts on behalf of society as a whole and because of the serious consequences of criminal conviction – must act to a higher standard than a litigant in a civil matter. Even in systems which do not regard the prosecutor as part of the judiciary, the prosecutor is expected to act in a judicial manner. A prosecutor, like a judge, may not act in a matter where he or she has a personal interest, and may be subject to certain restrictions aiming to safeguard his or her impartiality and integrity. These duties all point to the necessity to employ as prosecutors suitable persons of high standing and good character. The qualities required of a prosecutor are similar to those of a judge, and require that suitable procedures for appointment and promotion are in place. Of necessity, a prosecutor, like a judge, will have on occasion to take unpopular decisions which may be the subject of criticism in the media and may also become the subject of political controversy. For these reasons it is necessary to secure proper tenure and appropriate arrangements for promotion, discipline and dismissal which will ensure that a prosecutor cannot be victimised on account of having taken an unpopular decision. Where a prosecutor falls short of the required standard, the impartial judge may be able to correct the wrong that is done. However, there is no guarantee of such correction and in any event great damage can be caused. A system where both prosecutor and judge act to the highest standards of integrity and impartiality presents a greater protection for human rights than a system which relies on the judge alone.

52. Opinion CDL-AD(2021)028 on the liability of public officials for inaccurate asset declaration in Ukraine indicates that the duty of public officials to submit accurate asset declarations exists, in various forms, in many democratic legal orders. In order to be efficient, this legal mechanism has to be accompanied by appropriate sanctions, depending on a multitude of factors such as the category of public officials involved, the amount of

undeclared assets, the average income in a country as well as the magnitude of the problem of corruption in a given country.

B. Consultative Council of European Prosecutors (CCPE)

53. Opinion No. 13 (2018) on the independence, accountability and ethics of prosecutors, by the CCPE operating under the mandate given to it by the Committee of Ministers of the Council of Europe, provides as follows:

“21. Respect for ethical rules is a fundamental duty that should guide the activities of prosecutors. It is important to be able to refer to compilations containing ethical principles of prosecutors which should govern their conduct.

22. The conduct of prosecutors, like that of judges, cannot be left to their sole discretion, be it within and outside their work. This is particularly important when assessing the activities of prosecutors and in disciplinary proceedings against them.

...

51. The respect for the rule of law requires the highest ethical and professional standards in behaviour of prosecutors, as for judges, both on duty and off, which allows confidence in justice by society. Prosecutors act on behalf of the people and in the public interest. They should therefore always maintain personal integrity and act in accordance with the law, fairly, impartially and objectively, respecting and upholding fundamental rights and freedoms, including the presumption of innocence, the right to a fair trial, and the principles of equality of arms, separation of powers, and binding force of court decisions. They have a duty to be free from political or other influence.

...

55. They must demonstrate absolute integrity in their behaviour and not accept any kind of benefits or remuneration linked to the content of their choices, nor maintain career ambitions that may improperly guide their decisions (for example to please a particular political or administrative authority).”

C. Conference of the Prosecutors General of Europe (CPGE)

54. The European Guidelines on ethics and conduct for public prosecutors (“the Budapest Guidelines”), CPGE (2005) 05, recommend that public prosecutors should at all times exercise the highest standards of integrity and care, and – as to their private conduct – must not compromise the actual or the reasonably perceived integrity, fairness and impartiality of the public prosecution service by activities in their private life. They must respect and obey the law at all times, and should conduct themselves in such a way as to further and retain public confidence in their profession.

D. Group of States against Corruption (GRECO)

55. GRECO monitors States’ compliance with the Council of Europe’s anti-corruption standards. It works in cycles, known as evaluation rounds,

each covering specific themes. The GRECO evaluation team (GET) produces an evaluation report, which may include recommendations requiring action to be taken by the State to ensure compliance therewith (see also *Xhoxhaj v. Albania*, no. 15227/19, §§ 217-20, 9 February 2021).

56. As regards prosecutors in Albania, GRECO's Evaluation Report, published in 2014 within the fourth evaluation round, reads as follows:

“106. The Prosecution Service ... is neither a part of the executive nor of the judicial branches of power; due to the nature of its functions, it is a *sui generis* body, the only one of its kind, the guarantees of its autonomy being reinforced through a ban on membership of a political party and administration of its own budget ...

115. “High moral qualities” have been established as a general requirement for prosecutors' appointment and promotion. However, the GET was told that, when reviewing the data on individual candidate prosecutors, the Council of Prosecutors relies on the preliminary opinion of human resources departments of the School of Magistrates and the judicial police, and does not perform separate integrity checks. The GET notes that the detailed rules on submitting, selecting, verifying and testing candidate prosecutors are set by the Prosecutor General. The latter also determines the internal evaluation criteria and issues rules on the system of points for promotion. The examination of a sample evaluation form however indicates that the criteria for evaluating prosecutors' moral and ethical qualities have not been established. Accordingly, with a view to enhancing uniformity, predictability and transparency of prosecutors' appointment and promotion, GRECO recommends to further refine the criteria for assessing a prosecutor's ethical qualities, in particular by ensuring that the criteria are objective and transparent ...

Ethical principles and rules of conduct

...

127. No code of conduct or ethics applies to the Prosecution Service as a whole. Since membership of the Association of Prosecutors is voluntary and does not cover all Albanian prosecutors, not all of them are bound by the Code developed by the Association or fall within the jurisdiction of its Ethics Commission. Moreover, as the GET was told, the Commission itself is not operational and, since its establishment, it has not considered any breaches of ethical rules ... GRECO recommends that i) a set of clear ethical standards/code of professional conduct applicable to all prosecutors be elaborated and properly enforced; and ii) guidance, counselling and mandatory in-service training be made available to prosecutors on ethics, conflicts of interests and corruption prevention within their own ranks.

...

Declaration of assets, income, liabilities and interests

135. All prosecutors are to declare their assets, income, liabilities and interests, in the same scope and under the same terms as MPs and judges to the High Inspectorate for Declaration and Audit of Assets (HIDAA). Violations are sanctioned by administrative fines, except for refusal or failure to declare, the concealment or false declaration of assets which are criminal offences and very serious disciplinary offences that trigger dismissal from office. As in the case of judges, the absence of a timely on-line disclosure of contents of prosecutors' asset declarations erodes transparency and undermines the legitimate public interest in obtaining information on persons exercising an official function. Although GRECO abstains from addressing this matter by means of a separate recommendation, it invites the authorities to publish such data on the

official web site of the Prosecution Service or the HIDAA, with due regard being paid to the privacy and security of prosecutors and persons related to them who are subject to a reporting obligation.

...

137. Prosecutors' asset declarations are monitored by the HIDAA in a similar manner and scope as for judges and MPs, albeit with certain exceptions: declarations by the Prosecutor General are to be audited every two years, by appellate prosecutors and those assigned to the Prosecutor General's Office – every three years, and those made by other categories of prosecutors are subject to annual random checks. The Inspections and Human Resources Directorate under the Prosecutor General's Office provides guidelines on the mode of filling in declarations to all prosecutors and submits the duly completed forms to the HIDAA, within the timelines established by law ... As in the case of judges, a graduated approach is applied, whereby, depending on seniority, some categories of prosecutors are subject to more regular in-depth checks. Within the context of the Prosecution Service, such regularity appears to be justified but the deficiencies in the HIDAA's functioning already discussed in this report are not to be overlooked."

E. Council of Europe Conventions

57. Under the Criminal Law Convention on Corruption (ETS No. 173), a "public official" is understood by reference to the definition of "official", "public officer", "mayor", "minister" or "judge" in the national law of the State in which the person in question performs that function and as applied in its criminal law; the term "judge" includes prosecutors and holders of judicial offices (Article 1; see also Articles 26 § 3 and 30 § 2). A similar stance seems to be adopted in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) (Article 28 §§ 3 and 7 and Article 34 § 2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

58. The applicant complained of a violation 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. The parties' submissions

1. The applicant

(a) Applicability of Article 6

59. The applicant argued that Article 6 was applicable to the domestic proceedings, either under its civil or criminal head (compare

Xhoxhaj v. Albania, no. 15227/19, § 235, 9 February 2021), and stated that the vetting bodies performed a judicial function and were “tribunals” within the meaning of that Article.

(b) Independence and impartiality

60. The applicant contested the independence and impartiality of the vetting bodies, both as a whole and specifically in relation to the panels in her case. She argued that their members were not subject to any kind of vetting, that their mandate was limited in time and that there was no formal recognition of their irremovability. They were exposed to political pressure and received an exceptional one-time “performance bonus”. The panels in her case had not included anyone who had held judicial office or had sufficient professional experience and expertise to deal with the complex factual and legal issues that had arisen. One member of the SAC panel in her case, A.H., had graduated with an overall average grade below the one required for a vetting-body member under the Vetting Act. One person serving on an SAC panel (not in her case) was being prosecuted (see *Xhoxhaj*, cited above, §§ 90-92). The IQC panel had conducted the preliminary investigation and decided on the merits of the case. The vetting bodies had disregarded HIDAACI’s positive report, without providing reasons.

(c) Fairness

61. The applicant argued that the vetting proceedings had amounted to a flagrant denial of justice for the following reasons. By closing the investigation only in respect of the assets assessment, the vetting bodies had prejudged the outcome of the case because, while she could be dismissed for having failed the assets assessment, she could only have been confirmed in office if she had succeeded in all three assessments (assets, integrity and competence). The conclusion that she had assets of an amount more than double her legitimate income had only been made in the decision of 20 April 2018. It had not been discussed during the investigation or the proceedings before the IQC. It had not been earmarked as problematic – that is, as requiring her observations following the reversal of the burden of proof – in the decision of 13 March 2018 which had ended the investigation. The SAC had not remedied that serious shortcoming, considering that that conclusion was implicit in the accusations levelled against her at the end of the investigation and that she should have foreseen it. It had aggravated the violation by radically altering the IQC’s findings in its decision, thus again taking the defence by surprise (see below).

62. Before the SAC she had not been allowed to put forward any additional exculpatory evidence to prove certain crucial facts and legal elements in the case against her: that she had had actual ownership over the demolished building in Lezhë; that her mother-in-law had received the

proceeds of the sale of two plots of land in 2008; that A.M. had had enough income to give her family a small loan to purchase their only car and that, in any event, she had had legitimate resources to pay him back; and that she had had financial resources to make substantial savings over the years, taking into account the family's living expenses.

(d) Other grievances

63. The applicant's remaining complaints and related submissions are similar to those in *Xhoxhaj* (cited above, §§ 259-65, 318-20, 337 and 345).

2. The Government

64. The Government argued that the civil limb of Article 6 was applicable to the vetting proceedings and that the vetting bodies were "tribunals" within the meaning of Article 6.

65. The applicant had not submitted to the vetting bodies any request relating to the allegedly insufficient time to prepare the defence; she had not sought an adjournment or additional time to study or adduce evidence. She had not requested the recusal of any of the members of the SAC panel. Their decision to examine the appeal in camera without the parties present had been lawful and justified.

66. The SAC had held that the sources of income used for the creation of her assets had not been established through the documentary evidence required by the legislation. The applicant and her spouse had behaved as the legitimate owners of the flat in Lezhë even though they had had no legal right to claim that it was their property. The applicant admitted during the vetting proceedings that she had never had documents to prove her ownership of this flat. She had not therefore proven the lawfulness of the source used for the creation of her assets as required under section 32(4) of the Vetting Act. The applicant had not had sufficient resources to acquire them and had made a false declaration.

67. The Government's submissions are essentially similar to those in *Xhoxhaj* (cited above, §§ 266-69, 321-23, 338 and 346-47).

3. Third parties

68. The third parties' submissions are summarised in *Xhoxhaj* (cited above, §§ 270-79).

B. The Court's assessment

69. In *Xhoxhaj* (cited above, §§ 236-46), the Court considered that the civil limb of Article 6 was applicable to the vetting proceedings but that the criminal limb was not applicable. Noting the applicability of the civil limb and lack of substantiation concerning the criminal limb, the Court will only

assess, as in *Xhoxhaj*, the applicant's complaint with reference to the civil limb of Article 6.

70. In *Xhoxhaj* (cited above, §§ 284-86) the Court considered that the vetting bodies were "tribunals" within the meaning of Article 6 § 1. The Court sees no reason to hold otherwise in the present case.

1. Independence and impartiality

71. The notion of a "tribunal" implies that it should be composed of judges selected on the basis of merit – that is, judges who fulfil the requirements of technical competence and moral integrity to perform the judicial functions required of it in a State governed by the rule of law (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, §§ 220-21, 1 December 2020). A rigorous process for the appointment of ordinary judges is of paramount importance to ensure that the most qualified candidates in both these respects are appointed to judicial posts. The higher a "tribunal" is placed in the judicial hierarchy, the more demanding the applicable selection criteria should be. Such merit-based selection not only ensures the technical capacity of a judicial body to deliver justice as a "tribunal", but it is also crucial in terms of ensuring public confidence in the judiciary and serves as a supplementary guarantee of the personal independence of judges (*ibid.*, § 222). Taking into account the findings in *Xhoxhaj* (cited above, §§ 295-304), the Court considers that the manner of selection and appointment of the members of the IQC panel in the applicant's case did not, *per se*, disclose a violation of the requirements of independence or objective impartiality.

72. The Court first refers to its findings in *Xhoxhaj* (*ibid.* §§ 305-08) relating to the requirement of objective impartiality. Unlike ordinary disciplinary proceedings, the vetting proceedings did not commence upon the filing of a complaint or a charge of misconduct. As a result of the automatic operation of the Vetting Act, the IQC opened an investigation into the three declarations filed by the applicant rather than on the basis of its own findings that disciplinary proceedings had to be brought against her. The IQC panel did not assume the role of a prosecutor by bringing any charges or accusations against her. Its tasks were thus limited to re-evaluation based on the criteria laid down in the Annex to the Constitution and the Vetting Act. There was therefore no confusion between the IQC's statutory obligation to open the investigation, in which no charges or findings of misconduct were made against the applicant, and its duty to take a decision on her disciplinary liability. The mere fact that the IQC made preliminary findings was not sufficient to prompt objectively justified fears as to its partiality. In the Court's view, the same line of reasoning holds true in the present case.

2. *Fairness*

73. The Court notes that, unlike in *Xhoxhaj*, in the present case the IQC only pursued and completed the preliminary investigation in relation to the evaluation of assets and subsequently decided on the merits of the case on that basis, without delving into the integrity background check and evaluation of professional competence. That was consistent with the Vetting Act, as interpreted by the SAC. In the Court's view, that approach did not entail, *per se*, a violation of the applicant's right to a fair trial.

74. It is uncontested that the main assets subject to the evaluation and earmarked as problematic were the same at all stages of the proceedings before the IQC, including as stated in the decisions of 13 March and 20 April 2018. The legal basis (specifically, Article D § 3 of the Annex to the Constitution, quoted in paragraph 27 above), the main legal arguments and reasons for which they were first considered and then adjudged by the IQC as problematic remained substantially the same.

75. Section 4(6) of the Vetting Act, read together with section 47 of the Administrative Courts Act, provides the legal basis for dealing with (the admission of) evidence on appeal (see paragraphs 28 and 45 above). There is no indication that the applicant was unable to submit or otherwise prevented from submitting certain pieces of evidence already in the proceedings before the IQC. In the circumstances of the case, the Court considers that the manner in which the SAC dealt with that evidence did not violate Article 6 § 1 of the Convention. In any event, the SAC indicated that the newly proposed evidence was unlikely to have any decisive influence on the outcome of the case.

76. In particular, both during the preliminary investigation and in the course of the subsequent proceedings before the IQC the applicant was aware of the requirement to provide evidence of the date she (or her spouse) had received the proceeds from the sale of the plots of land, which had been declared by her as having been used to acquire the flat in Tirana (see paragraphs 7 and 10 above). In this connection, her subsequent attempt to adduce evidence relating to the date her mother-in-law had received that money did not seem to touch upon the relevant factual and legal matters determined by the vetting bodies, in particular, at the appeal stage. Similarly, during the preliminary investigation the applicant was already aware of the requirement to prove ownership of the demolished property, compensation for which had then been used, according to her, to acquire another property mentioned in the vetting declaration. When indicating, rather extensively, her or her family's savings as a source used to acquire the assets stated in that declaration or to meet her pecuniary obligations such as those under a private loan, being an experienced legal professional, she should have realised that it was essential, under Article D of the Annex to the Constitution, to prove her and/or her family's capacity to accumulate such savings in the manner and in the amount she had specified in the vetting declaration. There is no indication

that she was unable or otherwise prevented from adducing all relevant evidence already before the IQC, especially after receiving notice of the shifting of the burden of proof to her.

77. Furthermore, the applicant has not substantiated her allegation that the manner in which the vetting proceedings were conducted was, in so far as Article 6 is concerned, arbitrary and pursued an ulterior purpose of persecuting her for, essentially, her husband's political views or activities (compare *Xhoxhaj*, cited above, § 296; *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 129, 23 February 2016; *Navalnyy v. Russia*, no. 101/15, § 88, 17 October 2017; and *Nevzlin v. Russia*, no. 26679/08, §§ 124-25, 18 January 2022, in the context of a complaint under Article 18 of the Convention).

3. Conclusion

78. As to the remaining grievances, having examined the parties' submissions, the Court considers that the applicant has not substantiated them or raised any meritorious argument. The Court finds no reason to depart from its relevant findings in *Xhoxhaj* (cited above, §§ 283-88, 294-317, 328-36, 341-44 and 348-53).

79. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's complaints as presented and substantiated in the present case are manifestly ill-founded. Accordingly, they must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

80. The applicant complained that there had been a breach of Article 8 of the Convention on account of her dismissal from office and the ensuing ban on her practising law as a lawyer (advocate).

81. 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 before the Court

82. The scope of a case “referred to” the Court in the exercise of the right of individual application is determined by the applicant's complaint. A complaint consists of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols

thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant. It cannot, however, base its decision on facts that are not covered by the complaint. To do so would be tantamount to deciding beyond the scope of a case; in other words, to deciding on matters that have not been “referred to” it within the meaning of Article 32 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018, and *Udaltsov v. Russia*, no. 76695/11, § 186, 6 October 2020).

83. In her application to the Court in December 2018 the applicant raised two complaints under Article 8 of the Convention: (i) about the vetting proceedings and their direct outcome, that is, her dismissal from office; and (ii) about the ban – allegedly arising from the applicable legislation – on her practising law as a private lawyer (advocate), following her dismissal from office. As to this second complaint, in 2020 she informed the Court of her correspondence with the National Chamber of Advocates on the matter in November 2018 (see paragraph 23 above).

84. 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 12 September 2018 and the alleged subsequent ban on the applicant practising law as an advocate (member of the Bar).

B. Admissibility

1. As regards the applicant’s dismissal from office

85. As in *Xhoxhaj* (cited above, § 356), the Government argued that the complaint was incompatible *ratione materiae* with the provisions of the Convention and that the applicant had not exhausted domestic remedies. The applicant disagreed.

86. For the reasons stated in *Xhoxhaj* (ibid., §§ 362-67), 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 the applicant practising law

87. The applicant argued that her dismissal from office in the vetting proceedings had resulted in a ban on her practising law as a “lawyer” under Albanian law. In January 2020 she further informed the Court that on 9 November 2018 the President of the National Chamber of Advocates had rejected her request to enrol as a lawyer on account of her dismissal following the vetting proceedings (see paragraph 23 above). In her view, that reply unequivocally proved that the ban existed and had been imposed. She would never be able to practise law as a private lawyer, meaning that the

opportunities for her to find employment in the legal field corresponding to her professional qualifications and experience had been reduced to an extent which made practising her profession impossible.

88. In response to the applicant's submissions in 2020, the Government stated that the letter of 9 November 2018 was a reply to her request for information about the applicable legislation and was irrelevant to her complaint before the Court in relation to the vetting proceedings. The limitations on practising law as a lawyer had not arisen as a result of the vetting procedure. In any event, if the impugned letter were to be considered a decision, the applicant had not exhausted domestic remedies by lodging an action with an administrative court under the Administrative Courts Act.

89. In *Xhoxhaj*, the Court stated as follows:

“371. In the present case, the Court notes that the proceedings were governed by, and concluded in pursuance of, the Vetting Act. The vetting bodies did not take any decision whatsoever concerning the applicant's right to practise law; nor did they make any reference, even implicitly, to the provisions of the Lawyers Act. Furthermore, the applicant submitted that she was in possession of a licence to practise law. In these circumstances, the Court notes that she cannot claim to be a victim of a breach of her rights under Article 8 of the Convention.

372. That the applicant alleges to become a potential victim in the future on account of a risk of being disbarred, pursuant to the Lawyers Act ... is a mere suspicion or conjecture on her part. To date, she has not been affected by an adverse individual decision taken against her. In the Court's view, it is open to her to challenge any unfavourable decision that the Chamber of Advocates might take against her in the future before a court of law, and thus provide the respondent State the possibility of remedying any alleged violation of her Convention rights, as required by Article 35 § 1 of the Convention. Furthermore, the applicant did not demonstrate that the scope of application of the Lawyers Act was specifically directed against judges or prosecutors against whom a decision had been given in the course of vetting proceedings ... In sum, the applicant would not be required to modify any conduct under the Lawyers Act; she would be subject to the statutory requirements of that Act.”

90. The applicant has not provided the Court with a copy of her correspondence to the National Chamber of Advocates, merely stating that she intended to “enrol” as a lawyer. It appears that, at least as of November 2018, she did not have a licence to practise law as a “lawyer” (advocate) within the meaning of the Lawyers Act (see paragraphs 46-48 above).

91. In addition to some references to legislation, the letter of 9 November 2018, signed by the Chamber's President, contained findings relating to the applicant and her specific situation arising from the outcome of the vetting proceedings. However, it remains unclear whether that letter was a formal response, within that official's area of competence under the Statute of the Albanian Chamber of Advocates or other applicable legislation, to a specific application such as a request to “enrol”. If considered a formal decision rejecting the applicant's request, it is plausible that that letter would have been amenable to review under Albanian law, for instance, under the Lawyers Act and/or the Administrative Courts Act, as suggested by the Government. Nor

is there any indication that the relevant provisions of the Lawyers Act, in so far as they were cited as the legal basis for what allegedly constituted an interference with her rights under Article 8 of the Convention, were tested by way of constitutional review (compare, *mutatis mutandis*, *Fullani v. Albania* (dec.), no. 4586/18, §§ 78-80, 20 September 2022). In the present case, the Court does not need to make any further findings on the exhaustion issue because, in any event, it has not been proven that that document amounted to a decision personally and adversely affecting the applicant *vis-à-vis* her intention to practise law outside the justice system, for instance, in the private sector. The applicant has taken no steps to challenge her supposed ban from being eligible to join the Bar.

92. In the circumstances of the present case, the Court considers that this 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

93. There has been an interference with the applicant's right to respect for her private life on account of her dismissal from office (see *Xhoxhaj*, cited above, §§ 363-64 and 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.

1. Whether the interference was "in accordance with the law"

(a) The parties' submissions

(i) The applicant

94. The applicant submitted that the decision to dismiss her from office had not been in accordance with Albanian law, for the reasons summarised in paragraphs 60-63 above. The Vetting Act was couched in broad and ambiguous terms, failing to satisfy the requirement of foreseeability, in particular because domestic law did not set out the circumstances which could constitute grounds for dismissal from office. As regards the assets assessment, it was unclear what kind of discrepancy or shortcoming reached the requisite level of severity to justify dismissal. The vetting bodies enjoyed unfettered discretion in interpreting the provisions and assessing the circumstances of the case and, ultimately, in deciding whether an individual had to be dismissed. The absence of any guidelines rendered the discretion of the vetting bodies open-ended and undermined the principle of legal certainty. Almost any misconduct by a prosecutor or inconsistency in the initial declaration (no matter how small and insignificant) could be taken by

the vetting bodies as a sufficient factual basis for a serious “accusation” in the context of the vetting process and could result in dismissal.

(ii) *The Government*

95. The Government submitted that the provisions of the Vetting Act were clear, well-defined and comprehensible. The Act did not contain any contradictions and provided for certainty, clarity and continuity. The concept of lawfulness of assets was prominent in domestic law, whether in statutes relating to the disclosure of assets or the prevention of money laundering. For an asset to be considered lawful, two conditions had to be satisfied: the income used for its creation or acquisition had to originate from a lawful activity, and the income had to have been subject to the payment of applicable taxes or duties. The cumulative fulfilment of these two conditions was clearly provided for in Article D of the Annex to Constitution and section 3 of the Vetting Act.

96. The basis for finding an insufficient declaration of assets was the vetting declaration of assets. Under section 61(3) of the Vetting Act, read together with section 33, there would be an insufficient disclosure of assets if a finding was made to the effect that there was an absence of financial sources, a concealment of assets, a false disclosure of assets or a conflict of interest. Prior declarations of assets could be used as evidence by the vetting bodies.

97. Living expenses were calculated by reference to an individual’s declaration, evidence obtained by the vetting bodies from national and foreign institutions, prior declarations of assets and evidence collected by banking and non-banking institutions. Such evidence would be subject to adversarial proceedings, as a result of which the person being vetted would be invited to submit his or her own evidence in support of his or her position. All the evidence would be subject to numerical and logical checks and the IQC would make an individualised decision in respect of each case, with regard to the specific facts.

(b) The Court’s assessment

98. The expression “in accordance with the law” requires that the impugned measure should have some basis in domestic law, and that the law in question should be accessible to the person concerned and foreseeable as to its consequences (see, among other authorities, *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts)). In order for the law to meet the requirement of foreseeability, it must set forth with sufficient precision the conditions in which a measure may be applied, to enable the persons concerned – if need be, with appropriate advice – to regulate their conduct (see, among other authorities, *Altay v. Turkey (no. 2)*, no. 11236/09, § 54, 9 April 2019).

99. The decision to dismiss the applicant from her post in 2018 had a legal basis in section 61(1) and (3) of the Vetting Act enacted in 2016, in so far as the vetting bodies concluded that in her 2017 vetting declaration of assets she (i) had declared total assets greater than twice the value of lawfully obtained assets, and (ii) had made an insufficient disclosure of assets under section 33 of the Act. That latter provision listed the parameters for the disclosure assessment, requiring it to be accurate, in compliance with the law, supported by lawful financial sources, and there to have been sufficient lawful financial sources to justify the assets, no concealment of assets and no false declaration.

100. From the entry into force of the Assets Disclosure Act in 2003 and until the applicant submitted her vetting declaration of assets in 2017 under the Vetting Act, she was required to submit annual declarations in respect of private interests, the sources used for their creation, as well as in respect of financial obligations for, *inter alia*, immovable assets and rights over them, movable assets, financial obligations to other persons, personal income and declarable expenditure (see paragraph 24 above). Within the vetting process, the evaluation of assets also encompassed the disclosure and audit of assets, the lawfulness of the source used for their acquisition or creation, the fulfilment of financial obligations, including private interests, of the person being vetted and related persons (see paragraph 29 above). The vetting bodies could use and used as evidence the annual declarations of assets mentioned above (see paragraph 30 above).

101. At the start of the vetting process, the applicant was required to submit supporting documents justifying the truthfulness of her statements in the vetting declaration concerning the lawfulness of the sources used for the creation of the assets (see paragraph 30 above). Pursuant to Article D § 3 of the Annex to the Constitution, she had to provide convincing explanations concerning the lawful source of the assets and income; assets were to be considered lawful if the income had been declared and tax had been paid on it (see paragraph 27 above).

102. In so far as, under the Vetting Act, the evaluation of assets and a related decision to dismiss from office – particularly where Article D § 4 of the Annex to the Constitution was applied, as in the present case – are subject to the requirement of proportionality (see paragraphs 28 and 34 above), it can be assumed that only relatively serious failures could be considered to justify the ultimate sanction of dismissal from office. Also, failure to accurately declare assets had been a criminal offence prior to 2016 (see paragraph 25 above).

103. The Court concludes that the applicant has not substantiated her allegation that there was a lack of foreseeability as regards the grounds for her dismissal from the post.

104. Lastly, it is noted that the applicant's complaint under Article 6 § 1 of the Convention is manifestly ill-founded (see paragraphs 60-63 and 78-79 above). In the present case, the Court does not consider that the interference

under Article 8 of the Convention was not “in accordance with the law” on account of the circumstances mentioned in that complaint.

105. 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).

2. Whether the interference pursued a legitimate aim

106. The applicant contended that the interference had not pursued any legitimate aim. The legitimate aim put forward in the Government’s submissions, namely the cleansing of the judiciary from corruption, could have been achieved by less intrusive means, such as compulsory training. The European Commission had not called for a large-scale vetting of serving judges and prosecutors to eradicate corruption.

107. The Government submitted, with reference to a report on the assessment of the justice system in Albania (see *Xhoxhaj*, cited above, §§ 4 and 390) that a number of problems had been identified. Those problems had warranted the need to introduce structural changes, which had culminated with the constitutional amendments and the enactment of a set of essential statutes. The Government referred to the legitimate aims which the Constitutional Court had identified in the abstract constitutional review of the Vetting Act.

108. Noting the findings in *Xhoxhaj* (cited above, § 393) and the prosecutors’ status within the justice system in Albania (see paragraphs 36-38 above), the Court sees no reason to doubt that the aim pursued by the Vetting Act in general, and the interference in the present case (the vetting of a prosecutor) was consistent with the aims identified in the Constitutional Court’s decision and in 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. Whether the interference was “necessary in a democratic society”

(a) The parties’ submissions

(i) The applicant

109. The vetting bodies had overstepped the boundaries demarcated by the Vetting Act and dismissed her with reference to her annual declarations of assets which she had filed with the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest and in respect of which there had been a positive assessment. There were no procedural safeguards to prevent an arbitrary application of the law. The legislation did not set out an appropriate scale of sanctions for disciplinary offences, and no rules had been

developed to ensure their application in accordance with the principle of proportionality.

110. As a result of the vetting proceedings, she had been stigmatised as a person unworthy of performing her functions owing to the alleged inconsistencies in her assets and her purported aptitude to jeopardise public trust in the judiciary. She had been at the peak of her career as a result of many years of personal dedication and professional commitment as a prosecutor. Her reputation, honour and career had suffered an irreversible blow, also due to the massive media campaign ramped up against her. She had not only been dismissed from office as a prosecutor, she was also banned from exercising public functions, while the opportunities for finding a job in the legal field corresponding to her qualifications and experience had been reduced to an extent which made practising her profession nigh on impossible.

111. Her dismissal from office had been disproportionate to the aim pursued and to the misconduct on which it had been based. The legislation did not contain rules ensuring that the sanction of dismissal was applied in accordance with the principle of proportionality. In particular, the legislation did not set out an appropriate scale of sanctions for disciplinary offences, and no rules had been developed ensuring their application in accordance with that principle. Under section 58 of the Vetting Act, the only possible outcomes of the vetting process were confirmation in duty, suspension from duty for one year and dismissal from office. The two types of sanctions left little room to discipline a prosecutor on a proportionate basis. The vetting authorities were therefore given limited opportunities to balance the competing public and individual interests in each case.

112. The reasons given by the IQC had not been relevant or sufficient to justify such a draconian measure as dismissal from office. The alleged inconsistencies in her assets had not been of such a fundamental nature that they could or should have prompted her dismissal from office. The IQC had dismissed her from office mainly for the following reasons: failure to list, in her vetting declaration, two garages (even though ownership had been proven by the purchase agreement attached to it and the fact that she had mentioned the garages in the annual periodic declarations); failure to prove that in 2008 her mother-in-law had given her family ALL 752,800 (EUR 6,000) towards the purchase of the flat in Tirana (even though her mother-in-law had given a sworn statement confirming that and despite the applicant having declared that gift in the periodic annual declarations since 2008); failure to prove ownership of a demolished flat in Lezhë bought in 1998 (even though she had submitted a copy of the notarial agreement signed in 2011 between a construction company and her husband laying out the terms of compensation for the demolished flat); and failure to prove that a friend of her husband had had sufficient income to give them a small loan to purchase a second-hand vehicle. The reasons given by the vetting bodies had been utterly insufficient

to justify such a draconian measure as immediate dismissal from office. It had not been a foreseeable consequence of her conduct.

(ii) *The Government*

113. The Government submitted that the applicant had been subject to vetting proceedings, which had to be distinguished from ordinary disciplinary proceedings. Her dismissal from office had been proportionate and based, *inter alia*, on her declaring more than double what she could prove as lawful property under Article D § 4 of the Annex to the Constitution. The main purpose of the vetting process, under Article D, was to verify the lawful source of assets and the legal source of income. The applicant's primary obligation had been to prove the lawful source of the assets, which she had failed to do reasonably. She had failed to reverse the preliminary findings made by the vetting bodies. The disciplinary measure imposed on her had been proportionate to the violation committed by her.

(b) The Court's assessment

114. 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" (see *Xhoxhaj*, cited above, § 402). 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.*). 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 (*ibid.*, § 403).

115. As stated in *Xhoxhaj* (cited above, §§ 391-92 and 404), the Vetting Act responded to alarming levels of corruption in the judiciary, as assessed by the national legislature and other independent observers, and to the urgent need to combat corruption, which was also highlighted in the Constitutional Court's decision. The Court therefore considered that, in such circumstances, a reform of the justice system entailing the extraordinary vetting of all serving judges, along with all serving prosecutors, responded to a "pressing social need" (*ibid.*, § 404).

116. It remains to be determined whether the domestic authorities overstepped the respondent State's margin of appreciation when they decided to dismiss the applicant from the post of prosecutor. The Court will examine whether the vetting bodies carried out an individualised assessment of the

grounds which led to the dismissal from office, namely on account of the evaluation of assets. 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, the Court's role is limited to verifying compatibility with the Convention of the effects of such an interpretation (see *Radomilja and Others* [GC], cited above, § 149 in the context of Article 1 of Protocol No. 1 to the Convention, and *Xhoxhaj*, cited above, § 407 in the context of Article 8).

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

118. Turning to the present case, the Court notes that, having started the investigation for all three criteria and having completed the part for the wealth criterion, the IQC had regard to the probative value of the evidence gathered and decided to limit the assessment to that criterion. The IQC shifted the burden of proof to the applicant, who was made aware that that only concerned the assets assessment.

119. In accordance with the Vetting Act, the applicant was required to prove the underlying lawful sources used for the acquisition of the assets and, in essence, that she and her family had lived within their lawful means. In line with Albania's commitments under international law, the requirement to disclose assets and prove their lawful origin has been enshrined in domestic law since 2003, which also prescribes sanctions for failure to disclose assets or false disclosure thereof (see *Xhoxhaj*, cited above, §§ 201-04). This is the reason why the Vetting Act provided for the use of previous declarations of assets as evidence to verify the truthfulness of the vetting declaration of assets, in the present case essentially between 2007 and 2011 in relation to the assets acquired and/or income received by the applicant and her spouse between 2008 and 2016.

120. The Court notes the IQC's finding that the applicant's declared assets were more than twice the amount of the lawful assets, which would have

warranted her dismissal from office under Article D § 4 of the Annex to the Constitution. That finding resulted from the assessment of all the explanations and evidence presented by her, and all the data collected during the investigation and disclosed to her. In the SAC's view, that conclusion was the logical consequence of the reasoning relating to each asset and of the comparison between the amount of wealth accumulated over the years and declared in the vetting declaration in 2017 and the assessment of the lawfulness of the sources of income. The person being vetted had to convincingly explain the lawful source of assets and income and could not conceal, or inaccurately present assets owned, possessed or used. Under section 4 of the Vetting Act, the decision could be made based on one or more criteria or an overall evaluation of all three criteria. The constitutional and other relevant provisions provided for disciplinary measures, even based on one criterion.

121. As regards the most expensive asset (the flat with two garages in Tirana acquired for ALL 12,345,300), the vetting bodies considered that the applicant had not proven the lawfulness of a substantial part of the sources used for its acquisition. After careful re-examination of the evidence in the case file, the SAC concluded that ALL 4,749,349 could not be shown to have lawfully originated from the family savings for 2007-11. The SAC had jurisdiction over questions of fact and law, and that finding was related to the matter already examined by the IQC and resulted from the assessment of the applicant's ground of appeal concerning the IQC's stance on their "reasonable doubt" as to the actual extent of the savings. The assessment in respect of the savings was based on the information obtained from the applicant's annual declarations. As to the estimate of the living expenses, the SAC specified that it was based on official data published by the statistical agency for the relevant period. The SAC considered, *inter alia*, that no conclusive evidence had been adduced that was contemporaneous to the period when the money had allegedly been received and used to acquire certain assets. The Court considers that the domestic decisions were not arbitrary or manifestly unreasonable in that regard.

122. Furthermore, the SAC was not satisfied that the applicant had proven the lawful origin of the funds used to acquire another flat and the service unit in Lezhë and to purchase the car. On multiple occasions the applicant sought to prove the legality of income or transactions through documentary evidence produced years later, which raised legitimate questions about the integrity of her conduct and her sound judgment as a prosecutor.

123. The Court can accept that some of the SAC's findings appear to have been rather harsh or formalistic, in the light of the prevailing interpersonal relations and the degree of transactional informality that existed in Albania early on in the democratic transition. This is the case, for example, with the SAC's findings related to the formalities of the gifts made by the applicant's mother-in-law; the declaration of the two garages attached to the flat in

Tirana; or the sale of the old car for EUR 4,000. At the same time, it is clear that those assets or transactions involved rather small sums, in both absolute and relative terms. As such, they are not capable of casting doubt on the SAC's primary findings regarding the serious irregularities or lack of substantiation surrounding some of the applicant and her family's largest assets, such as the unjustified amounts of personal savings for 2007-11, the failure to provide proof of title or other valid documentation for the demolished flat in Lezhë, and the not insubstantial loan of EUR 12,000 from a friend.

124. The Court emphasises that a situation of general informality in the country, while understandable in certain respects, cannot exempt an experienced public prosecutor or other judicial officer from conducting his or her private affairs with the greatest respect for legality and in a way that is beyond public reproach; they are to be held to a higher ethical standard. Furthermore, the so-called "200% rule" provided the applicant with substantial leeway in relation to any objective difficulties in proving the legality of the assets, some of which had been acquired at some time in the past. Despite this, as established by the national authorities, the applicant did not convincingly prove the lawfulness of even 50% of the declared assets.

125. The Court notes that the findings of the SAC, as the final instance in the vetting proceedings, in respect of the evaluation of assets, as described above and taken cumulatively, were sufficiently serious to raise substantial doubts about the applicant's financial propriety and justify her dismissal from office.

126. The Court considers, having regard to the vetting bodies' individualised findings (see paragraphs 15 and 20-22 above), that the applicant's dismissal from her post as a prosecutor was proportionate under Article 8 § 2 of the Convention. The Vetting Act provided for two types of disciplinary sanctions: dismissal from office or suspension with the obligation to attend compulsory training. The absence of an appropriate scale of sanctions for disciplinary offences may be inconsistent with the principle of proportionality (see *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 182, ECHR 2013). The applicable legislation provided for a more detailed hierarchy of disciplinary sanctions, which would be imposed at the end of ordinary disciplinary proceedings (see paragraphs 40 and 43 above). However, vetting proceedings are *sui generis* in nature, despite the similarities that they appear to have with ordinary disciplinary proceedings. They were introduced in response to the perceived pervasive presence of corruption in the justice system in order to rid it of corrupt elements and preserve the healthy part of the system. The Court refers to its finding in *Xhoxhaj* (cited above, § 412) that, taking into account the exceptional circumstances which preceded the enactment of the Vetting Act, it is consistent with the spirit of the vetting process to have a more limited scale

of sanctions in the event a person fails to satisfy one of the three criteria laid down in the Vetting Act.

4. Conclusion

127. The Court concludes that the vetting proceedings and the applicant's dismissal from office complied with the requirements of Article 8 of the Convention.

128. As to certain repercussions relating to the findings made by the vetting bodies and the applicant's dismissal from office, the Court has previously considered that Article 8 of the Convention cannot be relied on to complain of a loss of reputation which is the foreseeable consequence of one's own actions, such as the commission of a criminal offence or other misconduct entailing a measure of legal responsibility with foreseeable negative effects on "private life" (see *Denisov v. Ukraine* [GC], no. 76639/11, § 98, 25 September 2018; see also, on certain limits of that principle, *M.L. v. Slovakia*, no. 34159/17, §§ 38-39, 14 October 2021). In the present case, the vetting bodies' findings and the applicant's dismissal from office resulted from proceedings which complied with the requirements of Articles 6 and 8 of the Convention.

129. Similarly, the Court does not overlook that under the Status of Judges and Prosecutors Act, the applicant's dismissal from office entailed a lifetime ban on re-entering the justice system. While she has not lodged a separate complaint with the Court as regards that – presumably, direct and inevitable – consequence of her dismissal from office in the vetting proceedings (see paragraphs 83-84 above), the Court reiterates that it has considered (see *Xhoxhaj*, cited above, § 413) that judges, and especially those occupying posts entailing a high degree of responsibility such as the posts in which the applicant in that case wished to resume employment, wield a portion of the State's sovereign power. In *Xhoxhaj*, the Court also stated that the lifetime ban imposed on that applicant, a Constitutional Court judge, and other individuals removed from office on grounds of serious ethical violations was not inconsistent with or disproportionate to the legitimate objective pursued by the State – within the national context of the then ongoing consolidation of the rule of law – to ensure the integrity of judicial office and public trust in the justice system (*ibid.*). Noting the prosecutors' status within the justice system in Albania (see paragraphs 36-38 above), the Court finds that similar compelling considerations apply in relation to the dismissal from the post of prosecutor and the ensuing ban on re-entering the justice system (see also paragraphs 51-57 above).

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

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

131. The applicant complained that she had not had an effective remedy, as required by Article 13 of the Convention, in respect of her complaint under Article 8 relating to the IQC's decision in her case.

132. Article 13 reads as follows:

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

133. The applicant argued that she had not had an effective remedy to challenge her unlawful and arbitrary premature dismissal from office. She referred to the shortcomings in the vetting procedure and the specific vetting proceedings against her, in particular before the SAC. She also referred to the impossibility of lodging a constitutional complaint (Article A § 1 of the Annex to the Constitution).

134. The Government disagreed.

135. In so far as the applicant has linked her complaint under Article 13 with her procedural grievances (see paragraphs 60-63 and 94 above), the civil limb of Article 6 § 1 of the Convention is *lex specialis* (see *Grzęda v. Poland* [GC], no. 43572/18, § 352, 15 March 2022). Also noting that the complaints under Article 6 are inadmissible, the Court concludes that this aspect of the complaint under Article 13 should be dismissed as inadmissible.

136. As to Article 13 in conjunction with the complaint under Article 8 in the context of the vetting proceedings, the applicant lodged an appeal against the IQC's decision ordering her dismissal from office. The SAC, which had full jurisdiction over questions of fact and law, examined the merits of her appeal, including the alleged unfairness and disproportionality of her dismissal from office. That the SAC dismissed her appeal is not sufficient for the Court to hold that it was not an effective remedy (see *Xhoxhaj*, cited above, §§ 286 and 416). In these circumstances, the Court considers that this part of the complaint should be dismissed as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint under Article 8 of the Convention (as regards the dismissal from office) admissible;
2. *Declares*, by a majority, the remainder of the application inadmissible;
3. *Holds*, by six votes to one, that there has been no violation of Article 8 of the Convention.

NIKËHASANI v. ALBANIA JUDGMENT

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

Milan Blaško
Registrar

Pere Pastor Vilanova
President

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

P.P.V.
M.B.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. I agree with point 1 of the operative provisions of the judgment holding that the complaint under Article 8 of the Convention is admissible.

2. I disagree, however, with point 2 of the operative provisions of the judgment to the effect that the remainder of the application is inadmissible. In particular, I am of the view that the complaint under Article 6 of the Convention is not only admissible, but that there has also been a violation of this Article in that the vetting proceedings resulting in the applicant's removal from office as a prosecutor were not fair within the meaning of Article 6 § 1. I also disagree with point 3 of the operative provisions holding that there has been no violation of Article 8 of the Convention.

3. This opinion takes the form of a statement of disagreement with the judgment (a “bare statement of dissent”), as regards points 2 and 3 of its operative provisions (concerning the complaints under Articles 6 and 8 of the Convention respectively), and therefore does not take the form of a fully-fledged separate opinion or the form of a simple anonymous vote against these points. A mere statement of disagreement with the judgment or part of it is an alternative choice provided by Rule 74 § 2 of the Rules of Court for judges who wish to dissent. This option is particularly suitable for me to follow in the present case, given that I already expressed my views in two rather similar or relevant applications against Albania (see, *mutatis mutandis*, my approach in my dissenting opinion in *Xhoxhaj v. Albania*, no. 15227/19, 9 February 2021, and my partly concurring and partly dissenting opinion in *Besnik Cani v. Albania*, no. 37474/20, 4 October 2022 (not yet final)).