



Judgments concerning dismissal of two Albanian prosecutors: no systemic problem

Today's **Chamber judgments**¹ in the cases [Nikëhasani v. Albania](#) (application no. 58997/18) and [Sevdari v. Albania](#) (no. 40662/19) concerned two prosecutors who had been dismissed from their posts after Albania had embarked on far-reaching reform of the justice system in 2016. The reform involved an exceptional re-evaluation of all serving judges and prosecutors – otherwise known as “vetting proceedings”.

The European Court of Human Rights held, by six votes to one, that there had been **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights as concerned Ms Nikëhasani. It considered that her dismissal had been justified, the vetting process having revealed serious doubts over her financial propriety after a careful examination of her case.

On the other hand, it held, unanimously, that there had been a **violation of Article 8** of the European Convention as concerned Ms Sevdari's dismissal. There had been no sign of bad faith in her declarations during the vetting process; any alleged irregularities had essentially concerned the payment of tax on some of her husband's income from lawful activities abroad.

The Court considered under **Article 46 (binding force and implementation)** that an appropriate redress for Ms Sevdari would be to reopen the proceedings. See [FAQ](#).

That did not mean, however, that the functioning of the current vetting process in Albania in general disclosed any systemic problem. Throughout both judgments the Court referred to its 2021 leading judgment [Xhoxhaj v. Albania](#), in which it had ruled that the vetting process was as a whole fair and impartial, and had responded to an urgent need to combat corruption in the country and restore public trust in the justice system.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicants are Besa Nikëhasani and Antoneta Sevdari, two Albanian nationals who were born in 1971 and 1976, respectively. They both live in Tirana.

Ms Nikëhasani was appointed to the post of prosecutor in 1993. She was dismissed in 2018 as a result of the vetting process. The relevant bodies found, among other things, serious irregularities with regard to her and her family's largest assets, including personal savings from 2007-11, a flat in Tirana with two garages, another flat in Lezhë and a 12,000 euro loan from a friend. They went on to conclude that, overall, she had not convincingly proven the lawfulness of even 50% of her declared assets.

Ms Sevdari started serving as a prosecutor from 2003. She was dismissed in 2019 when a vetting body concluded, on appeal, that she had not been able to prove that her husband had paid tax on income earned in Greece and Saudi Arabia, which had been used to acquire flats the couple owned

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

in Tirana and other property. The appeal decision also found that she had missed a deadline for lodging an appeal in a case related to the declaration of a public official's assets, and had thus further contributed to undermining public trust in the justice system.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, both applicants complained in particular that their dismissal and lifetime ban on their practising law had not been in accordance with Albanian law, damaged their reputations and careers and stigmatised them.

Relying on Article 6 § 1 (right to a fair trial) of the European Convention, they also brought complaints of the unfairness of the vetting process and lack of independence and impartiality of the vetting bodies which had examined their cases.

Lastly, the applicants alleged under Article 13 (right to an effective remedy) that they had not had an effective remedy in respect of their complaints either under Article 8 or both under Article 6 § 1 and Article 8.

The applications were lodged with the European Court of Human Rights on 17 December 2018 and 29 July 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Pere **Pastor Vilanova** (Andorra), *President*,
Georgios A. **Serghides** (Cyprus),
Jolien **Schukking** (the Netherlands),
Darian **Pavli** (Albania),
Peeter **Roosma** (Estonia),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),

and also Milan **Blaško**, *Section Registrar*.

Decision of the Court

The Court decided, by a majority, to reject as inadmissible both applicants' complaints under Article 6 § 1 and Article 13, essentially because it saw no reason to depart from its findings in the 2021 leading judgment *Xhoxhaj v. Albania*.

It also decided, by a majority, to reject as inadmissible their complaints under Article 8 with regard to the alleged lifetime ban on their practising law. Neither applicant could claim to be a victim of a violation of the Convention: there was no proof that a letter to Ms Nikëhasani from the National Chamber of Advocates had actually amounted to a decision rejecting her request to enrol as a lawyer, while Ms Sevdari held a licence and has been practising as a lawyer since her dismissal.

Article 8

In both cases the Court found that the applicants' dismissal had amounted to an interference with their right to respect for their private life which, based on section 61 of the Vetting Act, had been in accordance with the law. That law in general, as well as the interference in the cases at hand, had aimed at protecting national security, public safety and the rights and freedom of others, and had responded to the urgent need to combat corruption in Albania and restore public trust in the justice system.

Being dismissed from office was, however, one of the most serious disciplinary sanctions and required solid evidence.

The Court considered that the decisions against Ms Nikëhasani had been based on an assessment of her explanations/evidence and all the data collected during the investigation, and had been the result of a careful comparison of wealth accumulated over the years against lawful sources of income. The conclusion that there had been a disparity between her and her family's lawful income and their expenditure had not therefore been arbitrary or manifestly unreasonable. Indeed, such conclusions had raised substantial doubts about her financial propriety and had justified her dismissal from office.

The Court went on to mention, as in *Xhoxhaj*, that Ms Nikëhasani's dismissal had been proportionate and that the lifetime ban on her rejoining the justice system – as a prosecutor or judge, for example – on the grounds of serious ethical violations had been consistent with ensuring the integrity of judicial office and public trust in the justice system, and thus had not breached her rights under Article 8.

On the other hand, the Court found that Ms Sevdari's dismissal had not been proportionate to the legitimate aims pursued by the vetting process. The irregularities found in her vetting declaration had concerned exclusively the payment of taxes on income earned by her husband from his lawful employment abroad and not her personal income. There had been no sign of bad faith or deliberate violations by the applicant herself. In point of fact, her husband's earnings in Greece had covered a time when the couple had not yet married and the applicant had not yet been a prosecutor. As concerned her husband's more recent income in Saudi Arabia, there was nothing to show that it had not come from a lawful activity. While Ms Sevdari, as a financial crimes prosecutor, should have shown greater diligence in relation to income tax possibly owed by her spouse, the matter could have been investigated by the relevant authorities, or a less severe disciplinary sanction envisaged. Lastly, the Court considered that the missed deadline had been an isolated incident in her career.

The Court therefore concluded that Ms Sevdari's dismissal from office had amounted to a violation of Article 8.

Article 41 (just satisfaction)

The Court held that Albania was to pay Ms Sevdari 13,600 euros (EUR) in respect of pecuniary damage, EUR 6,000 in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

Article 46 (binding force and implementation)

The Court considered that an appropriate redress for the violation of Ms Sevdari's rights would be to reopen the proceedings and for the case to be re-examined in accordance with the requirements of Article 8 of the Convention. That did not mean, however, that the functioning of the current vetting process in Albania in general disclosed any systemic problem and the Court did not find it necessary to indicate any general measures to put an end to the Article 8 violation.

Separate opinions

Judge Serghides expressed a partly dissenting opinion in both cases, which is annexed to the judgments.

The judgments are available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.