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

THIRD SECTION

DECISION

Application no. 21141/20
Valbona BALA
against Albania

The European Court of Human Rights (Third Section), sitting on 9 April 2024 as a Chamber composed of:

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

and Olga Chernishova, *Deputy Section Registrar,*

Having regard to the above application lodged on 22 May 2020,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns the alleged violation of Article 8 of the Convention on account of the fifteen-year ban imposed on the applicant on being appointed to certain posts and positions in the justice system, following the discontinuation of the vetting proceedings because of her earlier resignation from the position of a legal adviser at the Constitutional Court.

THE FACTS

2. The applicant, Ms Valbona Bala, is an Albanian national, who was born in 1977 and lives in Tirana. She was represented by Ms T. Eatwell and then Mr S. Powles, lawyers practising in London. The Albanian Government were represented by Ms B. Lilo and then by Mr O. Moçka, General State Advocate.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. From April 2008 to 30 April 2017 the applicant worked as a legal adviser at the Constitutional Court of Albania.

5. According to the constitutional amendments and the legislation adopted in 2016, the legal advisers of the Constitutional Court were to be subject to the transitional re-evaluation process ("the vetting process") (see *Xhoxhaj v. Albania*, no. 15227/19, 9 February 2021). The vetting bodies – the Independent Qualification Commission (IQC) and the Special Appeal Chamber (SAC) – were established and staffed in June 2017; in September 2017 they were in the process of adopting internal regulations; the first vetting case was initiated in March 2018.

6. In December 2016 a position of a senior lawyer became available for a project funded by the United States Agency for International Development (USAID) and concerning issues related to the implementation of the justice reform in Albania.

7. In January 2017 the applicant submitted her vetting declarations in relation to the three components of the vetting process and authorised the competent authorities to proceed with the requisite verifications, including the processing of her personal data.

8. On an unspecified date, the applicant was offered the above-mentioned position within the USAID project. On 31 March 2017 she submitted her resignation, with effect from 1 May 2017 to the President of the Constitutional Court. Her resignation was accepted, and she started her new employment, which was better remunerated and which she pursued until April 2020 (see also paragraph 19 below).

9. It appears that in the meantime the applicant sought to apply for admission to the School of Magistrates. Under the transitory provisions of Law no. 96/2016, legal advisers at the Constitutional Court became eligible to go through the testing procedures at the School of Magistrates (see paragraph 31 below). During the first testing phase she scored 56 points out of 100, which was below the required 60% threshold. During the second round she received 160 points out of 200 and ranked first among all legal advisers and assistants. Notwithstanding that result, she did not qualify as a magistrate candidate.

10. Following the publication of notices for recently vacated positions of judges at the Constitutional Court in February and August 2018, the applicant expressed her interest and applied.

11. In view of the application for the Constitutional Court judgeship, the applicant's vetting case was included in the list of *prima facie* priority cases and, after drawing lots in May 2018, her case was chosen for priority treatment. In May 2018 the IQC initiated an administrative investigation into the components of the vetting process in respect of the applicant. She was informed accordingly in June 2018.

12. In June 2018 the applicant asked the IQC to clarify her status in the vetting proceedings, given that she no longer served as a legal adviser at the Constitutional Court and, in her view, no longer could be subject to the mandatory vetting process on that basis. Nor could she go through the voluntary vetting process since she had not passed the examination in the School of Magistrates and had not requested to be vetted on a voluntary basis. She concluded that she did not intend to reject the vetting process in her respect.

13. By a decision of 13 September 2018, the IQC discontinued the vetting proceedings in respect of the applicant since there was no longer any legal basis for treating her as a "vetting subject", also noting that she had not been successful as to her admission to the School of Magistrates. That decision was published on the IQC's website and she was informed.

14. The applicant and the Public Commissioner appealed before the SAC. The Public Commissioner requested that the SAC amend the discontinuation decision by way of specifying that the applicant be banned from being appointed to any of the posts and positions in the justice system listed in Article G of the Annex to the Constitution (see paragraph 22 below). The applicant complained that there had been no oral hearing before the IQC, it had not been established by law and had not provided adequate reasoning, in particular as to her legal status in the vetting process and the relevance of Article G. She also argued that the ban would be disproportionate.

15. On 25 July 2019 the SAC amended the IQC's decision of 13 September 2018. It held in the operative part that the vetting proceedings were terminated, and that the applicant could not be appointed, for fifteen years, as a judge or prosecutor at any level, a member of the High Judicial Council or High Prosecutorial Council, High Inspector of Justice or Prosecutor General.

16. The SAC stated as follows.

(a) The applicant had submitted her resignation on 31 March 2017, which coincided with the end of the legal term of three months for resignation under section 56 of the Vetting Act (see paragraph 23 below). However, that resignation fell outside the scope of section 56 since she explicitly expressed her will to resign with effect from the end of April 2017 and because she had not followed the procedure required by section 56. Thus, she did not intend to claim the right granted under that provision to certain financial benefits.

(b) The will not to avoid the vetting process could only be expressed by staying in office and completing that process. Once the applicant freely decided to terminate her employment at the Constitutional Court, she had to consider the legal consequences of that resignation under Article G of the Annex to the Constitution. Her claim that in her communication with the IQC she had expressed no wish to avoid the vetting process could not be accepted as a reason for not imposing the fifteen-year ban. Moreover, her position before the SAC – consisting of accepting the termination of the vetting

proceedings under Article G while opposing the imposition of the ban under the same provision – "questioned the real will not to avoid the [vetting process]". In reply to the applicant's argument on the disproportionality of the ban, the SAC referred to the findings made by the Constitutional Court (see paragraph 24 below) and considered that it had no jurisdiction to make such an assessment.

17. An abridged text of the SAC judgment was provided to the applicant on 26 July 2019. The full text was provided to her on 22 October 2019. The decision was published on the SAC's website.

18. In the meantime, on 30 July 2019 the Justice Appointments Council (JAC) decided to discontinue the examination of the applicant's candidature for the Constitutional Court judgeship. The Council referred to the SAC's findings relating to the fifteen-year ban.

19. It follows from the applicant's CV that she is a member of the Tirana Chamber of Advocates, has acted as an expert/moderator for the continuous training of magistrates, and as a visiting professor at the initial training course, organised by the School of Magistrates. After April 2020 she pursued other gainful activities, with an income that was comparable to her previous employment as adviser at the Constitutional Court. It appears that she has been serving in a managing position attached to the High Judicial Council lately.

20. The applicant provided to the Court references to media reports relating to the vetting process. Reportedly, in 2015 F. Xh., Member of Parliament chairing the Laws Commission and the Justice Reform Commission, stated that thirty-five percent of judges had assets over 300,000 euros (EUR); those assets were unjustified and showed the high level of corruption in the judiciary; and that the justice reform had to remove "that caste" from the system. Those media reports also quoted or cited statements on the aims of the vetting process by a representative of the International Monitoring Operation, and by a representative of the United States of America in Albania in 2019. The applicant also referred to the minutes of a meeting of the Special Parliamentary Commission for the Judicial Reform in May 2016, at which one of the invited speakers mentioned that the proposed regulation on resignation would "open a door for those who want[ed] to leave" and discussion revolved around the desirability of allowing those who would decide to resign to re-enter the justice system at a later time. Lastly, the applicant referred to the 2016 Commentary on Constitutional Reform on the Justice System without providing the text.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Discontinuation of vetting proceedings and ban on being appointed to posts and positions in the justice system

21. For the relevant provisions of Albanian law on the transitional vetting process, see *Xhoxhaj v. Albania*, no. 15227/19, §§ 93-154, 9 February 2021.

22. Article 179/b of the Constitution provides that all legal advisers of the Constitutional Court and Supreme Court, legal assistants in the administrative courts and the Prosecutor General's Office shall be subject to the vetting process under the Vetting Act (Law no. 84/2016 "On the Transitional Re-evaluation of Judges and Prosecutors"). Under Article G of the Annex to the Constitution, a person to be vetted may resign from office and in that case the vetting proceedings in respect of that person are discontinued; a vetting subject who has resigned under that Article may not be appointed, for fifteen years, as a judge or prosecutor at any level, as a member of the High Judicial Council or High Prosecutorial Council, High Inspector of Justice or Prosecutor General.

23. Section 56 of the Vetting Act provides that a vetting subject has the right to resign within three months from the entry into force of that Act and, in that case, the person is entitled to a transitional payment. That resignation shall be submitted in writing to the President of the Republic. In that case, the Independent Qualification Commission (IQC) shall issue a decision to discontinue the vetting proceedings.

24. In Decision no. 78 of 12 December 2017, the Constitutional Court considered that section 56 of the Vetting Act was constitutional as long as it did not deny a person to be vetted the right to resign, a right guaranteed by Article G of the Annex to the Constitution. Section 56 of the Vetting Act enables a person who resigns within the three-month period to claim a transitional payment according to the legal provisions in force, a benefit that was not available to persons who resigned after that deadline. The Constitutional Court underlined that as long as the person remained in office and the vetting process had not yet been completed, that person had the right to resign and in that case the vetting proceedings would be terminated, pursuant to Article G of the Annex to the Constitution.

25. In Decision no. 1 of 11 June 2018, the SAC held as follows. The act of resignation, submitted properly, constitutes a reason for the termination of the proceedings and for the constitutional provision to be fully implemented. While being provided for by the Constitution (Article G of its Annex), the resignation is neither a ground for dismissal from office in respect of a vetting subject, nor for confirmation in office. However, the exercise of the right to resignation is accompanied by a restriction on the person's right, a fifteen-year ban on being appointed to certain posts or positions. When

terminating the vetting proceedings, the IQC also had to decide on imposing that ban.

26. Following the initiation of the vetting proceedings in 2020, the IQC was apprised that A.H. had resigned from his post as a judge in 2019. The SAC then considered that, even assuming that he had resigned on account of his medical condition and that that condition had been incompatible with continuing to serve as a judge, those considerations were irrelevant for the review of the IQC's decision to terminate the proceeding and to impose the above-mentioned fifteen-year ban. It was also noted that Law no. 96/2016 "On the Status of Judges and Prosecutors" provided for a possibility to suspend a judge's exercise of judicial duties for health reasons, while maintaining the status of judge. Recourse to that possibility could have avoided the discontinuation of the proceedings and the ban under Article G of the Annex to the Constitution. That ban could not be disproportionate, being prescribed by a constitutional provision as a mandatory consequence of resignation from office in the exceptional context of the one-time vetting of all judges and prosecutors in the country. The vetting bodies had no discretion for not applying that ban or changing its duration (SAC's decision no. 42/2020).

27. As of November 2023, the IQC had taken 101 decisions on the termination of the vetting process under Article G of the Annex to the Constitution for sixty judges, twenty-seven prosecutors, twelve legal assistants, legal advisers, and some others; and eight decisions on the termination of the vetting process under section 56 of the Vetting Act for three judges, one prosecutor and four legal advisers at the Supreme Court.

B. Eligibility and selection criteria and procedures for the relevant posts and positions

1. Posts accessible to "magistrate" candidates (via the School of Magistrates)

28. Part IX of the Constitution, entitled "The courts", concerns the judicial system consisting of the Supreme Court, courts of first instance and appeal courts. Within Part IX, Article 136/a provides that a "judge" can be an Albanian citizen appointed by the High Judicial Council after graduating from the School of Magistrates and upon the completion of the preliminary process of the verification of their assets and their background checks, in accordance with the law. Under Article 147/a of the Constitution (also within Part IX of the Constitution), the High Judicial Council appoints judges "at all levels".

29. Section 2 of Law no. 96/2016 defines "magistrates" as judges, except for judges of the Constitutional Court, and prosecutors. Section 2 of Law no. 98/2016 "On the Organisation of the Judicial Power" defines the

"judicial system" as consisting of all the courts, except for the Constitutional Court, and the governance bodies of the judiciary.

30. Under section 244 of Law no. 115/2016 "On the Governing Bodies of the Judicial System", the School of Magistrates provides the professional education of magistrates, which includes the initial training for magistrate candidates and the continuous training for judges and prosecutors. Applicants for admission undergo a competition, their knowledge is tested, and their integrity is subject to verification (section 266). The first phase is of a qualifying nature and is followed for successful applicants by the second written phase of the examination. The candidates who have graduated from the School after the successful completion of the initial training shall be appointed magistrates (section 271).

31. Pursuant to section 28 of Law no. 96/2016, any Albanian citizen satisfying certain eligibility criteria is entitled to apply to the School for admission to the initial training as a magistrate. It does not appear that there is any maximum age limit or any limit on the number of times one may apply. As regards specifically the legal advisers at the Constitutional Court and some other officials in similar positions, who are subject to the vetting process under the Vetting Act, they have the right – if they have obtained at least a 60% score in the proficiency test at the School of Magistrates and passed a second examination – to be admitted to the School of Magistrates (section 165). Where the vetting bodies have issued a decision to dismiss from office, the person's training is discontinued (see also sections 10, 22 and 25 of the 2017 Internal Regulations of the School of Magistrates).

2. Senior positions accessible to "non-magistrate" candidates

(a) In the judicial and prosecutorial systems

(i) Supreme Court judgeship

32. Pursuant to Article 136 of the Constitution, Supreme Court judges are selected from career judges with at least thirteen years of experience. One-fifth of the Supreme Court judges is selected from among prominent jurists with not less than fifteen years of experience as advocates, law professors, law lecturers or senior lawyers in public administration or other fields of law. Supreme Court judges are appointed, for a single nine-year tenure, by the President of the Republic upon proposal of the High Judicial Council.

33. It appears that following the selection procedures in 2019 and thereafter, four out of eighteen judges currently sitting on the Supreme Court were appointed from among prominent jurists.

(ii) Prosecutor General

34. Under Article 148/a of the Constitution, the Prosecutor General is elected for a single seven-year mandate by a three-fifths majority of the

members of the Parliament, from a list of three candidates proposed by the High Prosecutorial Council. The Council shall select and rank the three most qualified candidates and forward that list to the Parliament. The Prosecutor General shall be elected from among prominent jurists, with at least fifteen years of professional experience, with high moral and professional integrity, who have graduated from the School of Magistrates or have an academic/scientific degree in law. The candidates must pass an asset and background assessment and have no disciplinary measure in force (section 22 of Law no. 97/2016 "On the Organisation and Functioning of the Prosecution Office").

(iii) Membership of the High Judicial Council and High Prosecutorial Council

35. Under Article 147 of the Constitution and sections 4 and 19-58 of Law no. 115/2016, the High Judicial Council has eleven members serving on a full-time basis for five years. Six members are career judges and are elected by "the judges of all levels of the judicial power". The other five are "lay members" elected by Parliament, with a majority of two-thirds of all its members: two from among practicing advocates, two from among lecturers at law faculties and the School of Magistrates and one from among representatives of civil society. Lay candidates undergo a preliminary assessment of their compliance with multiple legal conditions and criteria (including a minimum of fifteen-year professional experience), the preliminary assessment of their moral and professional integrity, and a filtering mechanism of candidatures.

36. Similar rules concern membership of the High Prosecutorial Council (sections 101 and 117-56 of Law no. 115/2016).

(iv) High Inspector of Justice

37. Pursuant to Article 147/d of the Constitution an Albanian citizen may be elected High Inspector of Justice, for a single nine-year term, if that person meets certain eligibility criteria, such as fifteen years of professional experience as a prominent jurist and being a person of high moral and professional integrity. The Justice Appointments Council evaluates the candidates pursuant to the statutory evaluation criteria, ranks the candidates, and submits a report to the Parliament that then elects the High Inspector of Justice, by a three-fifths majority of its members.

38. That position was filled in January 2020 and has not been vacant since.

(b) Constitutional Court judgeship

39. Part VIII of the Constitution concerns the Constitutional Court and its members. Article 125 of the Constitution provides that three members are appointed by the President of the Republic, three members are elected by the Parliament (with a three-fifths majority of all its members) and three

members are elected by the Supreme Court. The judges are selected from a list of the top three candidates as ranked by the Justice Appointments Council for each vacancy. Judges of the Constitutional Court must have a higher legal education, at least fifteen years of professional experience as judges, prosecutors, lawyers, professors or lecturers of law, or senior civil servants in the public administration, with a prominent activity in the field of constitutional law, human rights or in other fields of law. Judges of the Constitutional Court serve a single nine-year term.

40. Pursuant to the Justice Appointments Council's Decision no. 4 of 11 March 2019 on the verification of candidates for the vacancies in the Constitutional Court and for the High Inspector of Justice, magistrate candidates and other persons subject to the vetting process under the Vetting Act, who have not been definitely confirmed in office by the vetting bodies, are not allowed to run for the relevant positions (paragraph 111).

COMPLAINT

41. The applicant complained that following the discontinuation of the vetting proceedings in her respect, she was banned from being appointed to the Constitutional Court judgeship and some other positions and posts in the justice system and sustained reputational loss, in breach of Article 8 of the Convention.

THE LAW

42. The relevant parts of Article 8 of the Convention read as follows:

> "1. Everyone has the right to respect for his private and family 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..."

A. The parties' submissions

1. The Government

43. The Government stated that the SAC had pronounced the operative part of its decision on 25 July 2019, one day later the applicant had been provided with its short version and had received the full text on 22 October 2019. The application to the Court had been lodged only on 22 May 2020. She had not exhausted domestic remedies because she had not sought a judicial review of the Justice Appointments Council's decision of 30 July 2019 before the Administrative Court of Appeal (see paragraph 18 above). Article G of the Annex to the Constitution concerned a ban on being appointed a judge in a court other than the Constitutional Court. Thus, it was

the decision of 30 July 2019 – rather than the SAC's decision imposing that ban – that put an end to her candidature for the Constitutional Court.

44. The Government argued that the complaint was incompatible *ratione materiae*. The discontinuation of the vetting proceedings did not affect the applicant's inner circle and had no consequences for her employment relationship with the Constitutional Court or her work in the private sector; her income was unaffected. As to the fifteen-year ban, Article 8 of the Convention guaranteed no right to employment or to apply for a judicial vacancy. The discontinuation decision had no adverse effect on her ability to build relationships in society or in the workplace, or on her reputation. The discontinuation was not accompanied by any direct sanctions. No investigation had been completed within the vetting process. No information relating to its components had been published in the media. The decisions taken by the vetting bodies contained no statements on the applicant's moral values. The discontinuation of the proceedings had arisen from her choice to resign.

45. The SAC's decision did not prevent the applicant from becoming a judge of the Constitutional Court as, in any event, Article G of the Annex to the Constitution did not bar access to the Constitutional Court judgeship. As to the other posts or positions in the justice system listed in Article G, the applicant did not currently meet the respective eligibility requirements. She had not passed the entrance examination in the School of Magistrates and had not acquired the status of a "magistrate". Thus, she could not exercise judicial or prosecutorial functions at any level and could not become a member of the High Judicial Council or High Prosecutorial Council, their members being nominated from among the "magistrates". Nor could she become a non-judicial member of those Councils, having no relevant professional experience for such candidatures. Thus, the ban imposed by the SAC was essentially declarative and did not truly affect her professional life.

46. The ban under Article G of the Annex to the Constitution was a *sui generis* measure aimed at preventing using resignation as a tool for avoiding the vetting process and for returning to the justice system shortly thereafter. That would corrupt the purpose of the reform seeking to break with the past and to provide opportunities for the reconciliation of the State and society and for building a democratic society. The resignation scheme was aimed at reducing the workload of the vetting bodies to enable them to complete the vetting process promptly and efficiently. After her resignation, the applicant did not exercise any functions within the justice system, which could allow for the continuation of the vetting process in her respect. Instead, she had chosen to take up employment outside the justice system. The vetting bodies had no choice but to apply the requirements of Article G and order the ban. Given the duration of the vetting process for nine years, the fifteen-year ban was not unreasonable, having regard to the purposes of that process.

47. Article G did not affect the applicant's ability to practice her profession. The applicant had not lost any title, scientific rank or public office and continued to enjoy the same rights as before. She worked for an important international project aimed at reducing the caseload of the Supreme Court. That job was chosen by her and suited her commendable professional background and her career expectations. The exercise of a profession could not be limited to the exercise of a public office or public function. For instance, while the exercise of the profession of a lawyer (admitted to the Bar) would be based on a person's choice subject to fulfilling certain criteria, a judicial post or position concerned the exercise of a portion of the State's sovereignty. Thus, the "evaluation criteria" applicable in the context of a comprehensive reform in the justice system had to be met.

2. The applicant

48. The fact that the applicant had a job was insufficient to rule out the applicability of Article 8 of the Convention. She was limited in her right to choose her employment, in fair conditions depending only on clear and non-arbitrary criteria and in accordance with personal competences. It is part of a person's right to personal development and integrity to have the choice to leave and apply for a job. Under those conditions the applicant had had the right to resign as an adviser at the Constitutional Court because she had found another, better remunerated, job opportunity that she considered more appropriate for her professional and personal development at the time. She also had the right, when the opportunity arose, to apply for the Constitutional Court judgeship, after undergoing the vetting process in the same conditions as the other candidates. The ban for fifteen years, and potentially for life, on applying for any position in the judiciary affected her Article 8 rights under both the reason-based and consequence-based approaches.

49. Referring to the *travaux preparatoires* of the Special Parliamentary Commission for the Justice Reform (see paragraph 20 above), the applicant argued that Parliament considered Article G of the Annex to the Constitution, read with section 56 of the Vetting Act implementing it, as opening "a door for those who want[ed] to resign" which would "eventually bring to a higher level of cleaning of the system". The legislator considered them as seeking to hide their assets obtained as a result of corruption, and thus provided for a sanction consisting of the fifteen-year ban from applying for a post in the judiciary. The SAC gave the same interpretation in Decision no. 1/2018 (see paragraph 25 above). Before the Court, the Government accepted that the rationale of the discontinuation of proceedings, foreseen by Article G of the Annex to the Constitution, was to exclude individuals who lacked integrity and professionalism from the justice system. That meant that the applicant, as a person being sanctioned under that provision, lacked those qualities, and had to be "purged" from the justice system. She was considered untrustworthy to work within it and the negative consequences of that

qualification were to last for fifteen years at least. That was damaging to the reputation, career, personal and professional development of the applicant as a lawyer in Albania and affected her relations with her inner circle, including her family, friends, and colleagues.

50. It was unreasonable to conclude that any person who resigned from office lacked the above-mentioned qualities. Being excluded from applying for any judicial position in Albania for years affected her professional future and, thus, her salary and her future pension. For the time being, her financial situation did not suffer a major decrease as compared to her earnings at the Constitutional Court. However, her employment stability was at risk, as of 2021 she was engaged with international projects financed only on a yearly basis. While holding the position as a senior attorney/team leader as of 2021, her salary was lower than that of a Constitutional Court judge, a position with far more potential for professional and intellectual development and a far more prestigious personal achievement. Her opportunity to obtain a stable job in the legal field that would correspond to her professional qualifications and experience was reduced to an extent making the practice of her profession nearly impossible.

51. In particular, the applicant lost the chance to establish and maintain professional opportunities within the Albanian judicial system during this period. Prior to the ban, she had been eligible, in view of her background, experience and capacities, both judicial and academic, to apply for senior posts within the Albanian judiciary. Being perceived by the Albanian judicial community as lacking integrity and professionalism, her relationship with others, and especially with members of the Albanian legal community, had suffered greatly.

52. The thrust of the applicant's complaint did not concern asserting any right to be appointed as a Constitutional Court judge, but the fact that the JAC refused to assess her professional qualities because of her resignation.

53. Even after fifteen years, sections 28 and 36 of Law no. 96/2016 regulating admission to initial training and appointment as a magistrate might exclude the applicant for life from applying for any judicial or prosecutorial post because she had been subjected to a "sanction" within the meaning of that Law. In practice, she was also excluded from any other public job.

B. The Court's assessment

54. The Special Appeal Chamber imposed on the applicant a prospective ban on being appointed, for fifteen years, as a judge or prosecutor at any level, as a member of the High Judicial Council or High Prosecutorial Council, High Inspector of Justice or Prosecutor General (see paragraph 22 above). That ban was applicable to the vetting subjects who resigned from office during the transitional vetting process (see *Xhoxhaj v. Albania*, no. 15227/19, §§ 391-93, 9 February 2021).

55. The Court will first examine the Government's arguments as to whether, in the specific circumstances of the present case, the ban amounted to an "interference" with the right to respect for private life under Article 8 of the Convention.

1. General principles

56. The Court reiterates at the outset that Article 8 does not guarantee, as such, a right to be appointed to a post or position in public service (see *Bara and Kola v. Albania*, nos. 43391/18 and 17766/19, § 55, 12 October 2021, and *Frezadou v. Greece*, no. 2683/12, § 28, 8 November 2018; see also *Lorenzo Bragado and Others v. Spain*, nos. 53193/21 and 5 others, §§ 82 and 119, 22 June 2023).

57. The Court also reiterates its case-law on the applicability of Article 8 in relation to disputes concerning, essentially, already existing employment relationships, including such outcomes as dismissal from office or demotion, and the "private life" consequences arising from those outcomes (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 92-117, 25 September 2018). In those contexts, the typical aspects of "private life" that may be affected include one's inner circle, the opportunity to establish and develop relationships with others and that person's reputation. Where a "private-life" issue allegedly arises because of the consequences of an adverse measure, the threshold of severity with respect to the above-mentioned aspects assumes crucial importance. It is for the applicant to show convincingly that the threshold was attained in his or her case, and to substantiate the very serious consequences of the impugned measure, affecting his or her private life to a very significant degree. An applicant's suffering is assessed by comparing his or her life before and after the measure in question. The applicant must define and substantiate the nature and extent of that suffering, which should have a causal connection with the impugned measure (see *Denisov*, cited above, § 117, and *Gyulumyan and Others v. Armenia* (dec.), no. 25240/20, § 88, 21 November 2023).

58. As to the alleged "interference" with what the applicant seeks to have protected under Article 8 of the Convention, the Court reiterates that as regards compliance with Article 34, an applicant must show that they were directly affected by the impugned measure. The Court's task is to determine whether the manner in which the domestic law and practice were applied to, or affected, the applicant gave rise to a violation of the Convention. Account should be taken not only of the formal position at the time when the complaint was lodged with the Court but of all the circumstances of the case in question, including any developments prior to the date of the examination of the case by the Court (see *Tănase v. Moldova* [GC], no. 7/08, § 105, ECHR 2010; see also *Thanza v. Albania*, no. 41047/19, § 134, 4 July 2023).

2. Application of the principles in the present case

59. In the present case the Court has to determine, in so far as Article 8 is claimed to be applicable *ratione materiae* to the facts of the case, whether the applicant has been directly affected in her professional development and career choices by the fifteen-year ban imposed on her, and if so, to what extent. The Court will consider first the applicant's claims related to access to senior positions in the justice system, followed by the alleged impact on her career and reputation more broadly.

(a) Alleged denial of access to senior positions in the justice system

60. The Court notes that prior to the ban the applicant had never held any post or position listed in Article G of the Annex to the Constitution, in particular, a "magistrate" within the meaning of Albanian law, that is, a judge or a prosecutor (compare *Lekavičienė v. Lithuania*, no. 48427/09, §§ 37-38, 27 June 2017, and *Gloveli v. Georgia*, no. 18952/18, § 37, 7 April 2022). The alleged interference with her exercise of any right allegedly falling within the scope of Article 8 of the Convention did not relate to any existing or previous employment relationship in the justice system.

61. The applicant was not successful in her application to be admitted to the School of Magistrates, which is the sole path for appointment to most of the posts and positions mentioned in Article G of the Annex to the Constitution, namely as a career judge or career prosecutor (compare *Bigaeva v. Greece*, no. 26713/05, §§ 18 and 24, 28 May 2009, and *Oktay Alkan v. Türkiye*, no. 24492/21, §§ 41-42, 20 June 2023). As a result, she was unable to pursue any career positions in the judicial or prosecutorial branches (see paragraphs 28-31 above, for the relevant provisions of Albanian law). The Court notes that the 2016 justice sector reforms specifically created a transitory path for legal advisers at the Constitutional Court to pursue a magistrate's career, provided that they were successful in their vetting proceedings as well as in being admitted to the School of Magistrates.

62. Having regard to the domestic legislation (see paragraphs 32-40 above), the situation in which the applicant found herself following her resignation as legal adviser left her a narrow access path to a small number of high-level positions for which she could have applied, in principle, even in the absence of the fifteen-year ban. These options would be limited to the Constitutional Court judgeship; a small number of seats on the Supreme Court (at present four seats reserved for lawyers from outside the judiciary); five lay (non-magistrate) members of the High Judicial Council and High Prosecutorial Council; the Prosecutor General and the High Inspector of Justice.

63. The fifteen-year ban applies expressly to most of those positions. The Government have raised doubts as to the Constitutional Court judgeship. The

Justice Appointments Council (JAC), which is a not a judicial body, rejected the applicant's candidature for the nine-year tenure there based on the fifteen-year ban imposed by the SAC. The JAC did not provide any extensive reasoning as to why, in their view, the ban under Article G of the Annex to the Constitution concerning judgeships at "all levels" also applied to the Constitutional Court, which does not form part of the ordinary judiciary (see paragraphs 28 and 39 above). The applicant did not challenge the JAC decision, on this or any other ground. While the Government have argued that that particular judgeship is not subject to the ban, they have not substantiated their claim with reference to any relevant judicial practice or legislative history. Nor has the applicant engaged with the Government's interpretation, insisting that the alleged interference under Article 8 of the Convention stemmed from the ban imposed by the SAC in the vetting proceedings. However, neither the SAC nor any other court appear to have provided a conclusive interpretation as to whether Article G applies to the Constitutional Court judgeship. The Court will not further delve into this matter as the applicant's complaint is in any event inadmissible for the reasons stated below.

64. All the senior positions indicated in paragraph 62 above are open to experienced lawyers (non-magistrates) who must meet a number of detailed additional requirements. In terms of the subsequent process of selection, there are multiple filters or professional pre-selection mechanisms, which typically produce a shortlist of top candidates, one of whom is then appointed or elected by the ultimate decision-making body: this being the Parliament for the High Judicial Council, the High Prosecutorial Council, the Prosecutor General and the Inspector; the President of the Republic upon proposal of the High Judicial Council for the Supreme Court judges; and the President, the Parliament and the Supreme Court each appointing three Constitutional Court judges, on the basis of a shortlist (three choices per vacancy) prepared by the JAC. The parliamentary appointments are typically made by a three-fifths majority of all members, or a two-thirds majority of all members for the Councils.

65. All those positions, including the Constitutional Court judgeship, are senior justice-sector positions dependent, ultimately, on the appointment or election powers of political bodies or, in one instance, the Supreme Court. The Court considers that Article 8 of the Convention does not guarantee, as such, any form of eligibility for or access to senior positions in the justice system (see, *mutatis mutandis,* the cases cited in paragraph 56 above). Furthermore, in the circumstances of the present case, the Court is unable to speculate whether the applicant would have been otherwise eligible – under national law – for such senior positions or have a realistic chance of being considered for the same. The nomination processes are complex and multi-layered and depend, for the most part, on decisions made ultimately by political bodies (compare *Shortall and Others v. Ireland* (dec.), no. 50272/18,

§§ 53-61, 19 October 2021). The applicant has only partly tested the candidature for the Constitutional Court judgeship (see paragraph 63 above), but no other positions.

66. Therefore, insofar as the applicant seeks to complain about the adverse effect of the fifteen-year ban on her eligibility for a small number of high-level positions in the justice sector, the Court considers that Article 8 of the Convention is not applicable *ratione materiae* in the circumstances of the present case.

(b) Other alleged interferences with the applicant's private life

67. Even assuming that the vetting legislation restricted to some extent the applicant's career choices while the vetting process was ongoing, it is necessary to assess whether the nature and scope of such interference with her private life met the threshold required for the application of Article 8. The alleged interference stemmed from her decision to start another employment, which was outside the justice system and which she considered to meet her professional aspirations at the time. That decision was taken during the ongoing transitional re-evaluation process (the vetting process) in the justice system in Albania.

68. The prospective ban on certain employment opportunities did not – and could not *per se* – entail any change in the applicant's income. In any event, after her resignation in 2017, and after the discontinuation of the vetting proceedings in 2019, she pursued gainful occupation that was better remunerated, and later was at least comparable to her income as a legal adviser at the Constitutional Court.

69. The alleged interference did not entail, in itself, the applicant's removal from the "profession", for which she had already received training and which she had practiced until her resignation (compare *Bigaeva*, §§ 23-25, and *Lekavičienė*, §§ 37-38, both cited above; see also *Convertito and Others v. Romania*, nos. 30547/14 and 4 others, §§ 29 and 37, 3 March 2020). She no longer aspired to gainful occupation as a legal adviser. It follows from her submissions that the thrust of her complaint concerns access – both as to the vacancies in 2018 and any future vacancy – to judicial positions and more specifically the nine-year tenure at the Constitutional Court.

70. The vetting legislation, in substance, required a person falling under one of the categories eligible to be vetted to make a choice: either abstain from voluntarily changing the employment status within the justice system for the time of the vetting process or run a risk of being prevented from access to judicial or prosecutorial positions for a fifteen-year period. Vetting proceedings required some time, during which a vetting subject would need to continue to serve within the justice system (see an example in paragraph 26 above). The vetting process effectively started only in 2018 and the vetting proceedings in the applicant's case only started in May 2018 and took another

year (see paragraphs 5 and 15 above). However, the Court considers that the above-mentioned constraint did not, *per se*, impose an excessive burden in the specific circumstances of the case and given the exceptional nature and compelling purpose of the transitional re-evaluation process. The Court has no reason to consider that the applicant's decision to resign in 2017 was guided by any reason other than her aspiration for professional development through a more attractive employment opportunity and was not related to any difficult circumstances pertaining to her private or family life, for which resignation might have been the only viable solution (see paragraph 26 above).

71. The Government argued that the fifteen-year ban, which applied to all resignations leading to a discontinuation of the vetting process, irrespective of motive, was intended to prevent those who resigned from the justice system during the vetting process from returning to it through a "back door". Another rationale for that arrangement related to the need to ensure the speediness and efficiency of the transitional vetting process, while affording those who wanted to continue to pursue a career within the justice system an opportunity to do so, upon successful completion of the vetting process (see paragraph 31 above). The Court can accept that distinguishing between different types of resignations during this period could have created a legal loophole that might have rendered the resignation scheme as a whole unworkable, despite imposing a certain burden on those seeking in good faith an immediate career change.

72. For the purposes of the present case, it suffices to reiterate that by reason of their direct and continuous contact with the vital forces of their countries, their societies and their needs, the legislative and judicial authorities are best placed to assess the specific difficulties in safeguarding the democratic order in their State (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 111, ECHR 2013 (extracts)). The State must therefore be accorded some discretion as regards this country-specific and complex assessment which is of central relevance to the legislative choices (ibid.) such as those at issue in the present case (see, in that regard, *Xhoxhaj*, cited above, §§ 391-93). The risk of abuse if a general measure were to be relaxed is primarily for the State to assess. A general measure may be a more feasible means of achieving the legitimate aim than a provision allowing a case-by-case examination, when the latter would give rise to a risk of significant uncertainty, of litigation, expense, and delay as well as of discrimination and arbitrariness (see, *mutatis mutandis, Animal Defenders International*, cited above, §§ 108 and 110-11).

73. It is furthermore relevant that the impugned ban concerned access to occupation in one limited area within the public sector, in this case, essentially high-level positions within the justice system (see paragraphs 60-66 above). There is no reason to consider that that ban extended to employment in the civil service or the exercise of the lawyer's

profession. The fact remains that since 2019 the applicant has not been prevented, because of the discontinuation of the vetting proceedings or because of that ban, from engaging in any specific gainful occupation in the field of law outside the justice system. She continued to work until April 2020 for the USAID project and thereafter within a similar occupation.

74. The foregoing considerations are sufficient for the Court to conclude that insofar as the applicant seeks to complain about the adverse effects of the fifteen-year ban on her career choices or professional advancement more generally, such effects are not of a sufficient level of gravity to meet the threshold for the application of Article 8 of the Convention, under the heading of "private life".

75. Lastly, as to the applicant's argument that the impugned measure encroached upon her reputation, the Court reiterates its case-law on disciplinary proceedings against members of the judiciary, considering that some outcomes of those proceedings, such as dismissal from office, may carry a significant degree of stigma (see *Thanza*, cited above, § 121). In the present case the applicant, a former legal adviser at the Constitutional Court, was not found liable for any ethical misconduct of any form or disciplinary offence. By the Government's own admission, the applicant was and continues to be a well-regarded legal professional (see paragraph 47 above). She has been pursuing her career in rather senior positions (see paragraphs 6, 8 and 19 above). However, she has had to sustain the foreseeable consequence of her leaving voluntarily her prior position in the justice system amid what was considered as a crucial transitional process within the comprehensive reform of the justice system. The applicant was merely subject to a measure of general application (see also paragraphs 71-72 above), imposed on all vetting subjects who had resigned at that time, irrespective of any actual or supposed reason or motive for that resignation.

76. The SAC expressed certain doubts as to the applicant's willingness to submit to the vetting process, in view of her position in favour of the discontinuation of the vetting proceedings while pleading for not applying the fifteen-year ban. However, the SAC's decision contained no statement that she was unworthy of serving within the justice system (compare *Juszczyszyn v. Poland*, no. 35599/20, §§ 233-34, 6 October 2022; *Sevdari v. Albania*, no. 40662/19, § 61, 13 December 2022; and *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, § 86, 12 January 2023). There is no evidence of any individualised negative remarks made by the domestic authorities as regards her professional performance, personality, moral values, or character (see *Gyulumyan and Others*, cited above, § 93).

77. It follows that Article 8 of the Convention is also inapplicable as regards this aspect of the case.

(c) Conclusion

78. For its part, the Court has no reason to doubt that the applicant's resignation followed by a new employment was based on her aspiration for professional development and self-fulfilment. However, in view of the foregoing considerations, it concludes that the negative effects of the alleged interference with her right to respect for private life – including her professional reputation, her attempted access to the Constitutional Court judgeship or more generally on her career prospects – either did not fall under the scope of protection or did not cross the threshold of seriousness for Article 8 of the Convention to be engaged in the specific circumstances of the case.

79. Accordingly, the applicant's complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 2 May 2024.

Olga Chernishova
Deputy Registrar

Pere Pastor Vilanova
President