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La CEDU su ritardata reintegrazione di pubblico ministero sospeso
(CEDU, sez. III, sent. 4 aprile 2023, ric. n. 29943/18)

La Corte Edu si pronuncia sul caso riguardante l'indagine penale su due pubblici ministeri sospettati di irregolarità connesse alle loro dichiarazioni patrimoniali e finanziarie rese nel corso degli anni e per effetto di tale indagine sospesi dal loro incarico, come previsto dalla legislazione vigente.
I Giudici di Strasburgo hanno ritenuto che la sospensione della seconda ricorrente sollevasse una questione ai sensi dell'art. 8 della Convenzione e fosse priva di qualsiasi fondamento giuridico una volta conclusa l'indagine penale a suo carico, non essendo, quindi, stata disposta "a norma di legge", con conseguente violazione del diritto al rispetto della vita privata e familiare.
La Corte ha respinto, invece, come inammissibile l'analoga doglianza del primo ricorrente in ordine alla sua sospensione ed alla presunta fuga di dati personali a mezzo dei *media*.

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

THIRD SECTION

CASE OF XXXXX AND XXXXX v. ALBANIA

(Application no. 29943/18)

JUDGMENT

STRASBOURG

4 April 202*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of XXXXX and XXXXX v. Albania,

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

Pere Pastor Vilanova, *President*,
Georgios A. Serghides,
Yonko Grozev,
Darian Pavli,
Peeter Roosma,

Ioannis Ktistakis,
Andreas Zünd, *judges*,
and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 29943/18) 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 two Albanian nationals, Ms Rovena Gashi ("the first applicant") and Mr Dritan Gina ("the second applicant"), on 26 June 2018;

the decision on 7 September 2018 to give notice to the Albanian Government ("the Government") of the complaints under Articles 6, 8 and 13 of the Convention and to grant priority under Rule 41 of the Rules of Court;

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

Having deliberated in private on 7 March 2023,

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

INTRODUCTION

1. The case concerns the applicants' suspension from their posts as public prosecutors, alleged deficiencies in the related proceedings and a lack of effective remedies, and the alleged disclosure of documents to the media.

THE FACTS

2. The applicants were born in 1977 and 1976 respectively and live in Tirana. They were 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 by Mr O. Moçka, General State Advocate.

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

I. BACKGROUND INFORMATION

5. At the relevant time the applicants, a married couple, worked as prosecutors. In 2013 the first applicant was promoted to the post of prosecutor at the Prosecutor General's Office. She was then appointed Head of the Decriminalisation Unit there and worked on, *inter alia*, high-profile cases involving politicians, businesspeople and members of parliament. As Head of the Decriminalisation Unit until late December 2017, she oversaw the prosecutorial procedures for removing individuals with a criminal record from public office under the relevant legislation. In that capacity, she successfully requested the Central Election Commission to terminate the mandate of several MPs, mayors and other public officials. The second applicant was employed, from January 2018, as a prosecutor attached to the Tirana District Court (hereinafter "the Tirana prosecutor's office").

6. In accordance with the Assets Disclosure Act, which entered into force in 2003, the applicants submitted annual declarations of assets to the High Inspectorate for the Declaration and Audit of Assets and Conflicts of Interest ("HIDAACI"). In 2016 Albania embarked on comprehensive justice system reforms, which led to amendments to the Constitution and the enactment of several statutes relating to, among other things, the re-evaluation of all serving prosecutors (hereinafter "the vetting process") by the Independent Qualification Commission ("the IQC") at first instance and – in the event of an appeal – the Special Appeal Chamber ("the SAC") attached to the Constitutional Court (see *Xhoxhaj v. Albania*, no. 15227/19, §§ 4-7, 9 February 2021).

7. As part of the vetting process, the first applicant submitted a new and comprehensive declaration of assets in January 2017. This included assets owned by her spouse and other family members. HIDAACI, assisting the vetting bodies in the vetting process, gave a negative assessment of her declaration of assets. On 6 March 2018 she provided answers to the IQC's follow-up questionnaire on the sources of certain assets. By a decision of 25 July 2018, the IQC dismissed her from office. On 27 September 2018 she appealed to the SAC. She was suspended *ex lege* from her duties pending the decision on her appeal (see paragraphs 17 and 21 below). On 29 May 2019 the SAC upheld the IQC's decision of 25 July 2018.

8. For a transitional period, the SAC also acts as the final court in disciplinary matters involving judges, prosecutors and other justice officials (see paragraph 20 below).

9. The second applicant was subject to the vetting process in 2020 and 2021.

II. CRIMINAL INVESTIGATION AND SUSPENSION FROM OFFICE

10. In April 2018, following allegations made in certain online media in March 2018, a criminal investigation was initiated against the applicants under Article 257/a § 2 of the Criminal Code (refusal of disclosure, non-disclosure, concealment or false declaration of assets) in relation to disclosures made in periodic declarations of assets and during the then ongoing vetting process in respect of the first applicant. On 8 May 2018 the applicants were charged.

11. By orders of 11 May 2018, pursuant to section 151 of the Status of Judges and Prosecutors Act (see paragraph 25 below), the Interim Prosecutor General suspended the applicants from their duties as prosecutors (*pezullim nga detyra*) during the criminal proceedings against them. The suspension orders specified that they could be appealed against to the SAC, under Article 179 § 7 of the Constitution (see paragraph 20 below). The applicants applied to the SAC, which informed them that it could not adopt a decision in respect of their appeal because one member (I.R.) had withdrawn owing to a conflict of interest and, due to the lack of specific regulation at the time, a substitute could not be appointed. On 21 June 2018 the SAC panel, including I.R., left the appeal without examination, stating that the suspension orders were instead amenable to review before the Administrative Court of Appeal, as the competent court to hear such appeals at first instance. The applicants lodged the present application with the Court on 26 June 2018.

12. The applicants then applied to the Administrative Court of Appeal in Tirana, claiming that the suspension orders be quashed. By an interim decision, the court dismissed their request to suspend execution of the suspension orders. By a judgment of 8 November 2018, it allowed their claim, declaring the suspension orders unlawful and quashing them. It considered that the offence

with which they had been charged, which was punishable by a fine or imprisonment up to three years, fell within the competence of a district court to be tried by a single judge rather than by the Serious Crimes Court. Having regard to Article 2 of the United Nations Convention against Transnational Organised Crime of 2000, a "serious crime" meant conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. Under Articles 1, 29, 31 and 32 of the Criminal Code and Articles 13 and 75/a of the Code of Criminal Procedure, serious crimes were those which the legislature attributed to the competence of the Serious Crimes, Anti-Corruption and Organised Crime Court, or other crimes within the competence of a district court punishable by up to ten years' imprisonment. As a result, section 151 of the Status of Judges and Prosecutors Act , providing for *ex lege* suspension, was not applicable in the applicants' case. The court set aside the Interim Prosecutor General's suspension orders of 11 May 2018 and ordered the Prosecutor General's Office to pay the applicants' costs. The judgment of 8 November 2018 did not specify whether it was immediately enforceable. According to the applicants, the judgment was immediately enforceable (see also paragraphs 14 and 16 below), even though it was amenable to appeal before the Supreme Court of Albania. The Interim Prosecutor General sought a review on points of law before the Supreme Court. It appears that that appeal has not yet been examined. In January 2019 the Administrative Court of Appeal issued an additional decision specifying the amount of costs to be paid to the applicants.

13. The Fier District prosecutor's office took over the criminal investigation from another office and sought its discontinuation. By a decision of 4 February 2019, the Fier District Court granted that request. It stated that HIDAACI's assessment of the first applicant's vetting declaration had been a preliminary measure specific to the vetting process and subject to assessment by the vetting bodies. The report could not be used in any other proceedings against the person being vetted. The latter could not be subject to any other procedure in respect of the relevant facts while the vetting proceedings were pending. The criminal proceedings were discontinued pursuant to Article 328 § 1 (d) and (f) of the Code of Criminal Procedure (allowing a case to be dismissed where a reason exists that extinguishes the criminal offence or for which the criminal proceedings should not be initiated or continued, and in other cases provided for by law). On 18 April 2019 the Vlore Court of Appeal upheld the decision of 4 February 2019.

14. On 20 March 2019 bailiffs filed, on behalf of the applicants, a notice of voluntary enforcement with the Prosecutor General's Office for payment of the applicants' costs under the judgment of 8 November 2018. On 11 April 2019 the enforcement procedure was discontinued because the costs had been paid.

15. On 16 April 2019 the second applicant requested the Tirana prosecutor's office to provide him with "the physical conditions, technical infrastructure and material basis for continuing his prosecutorial functions at the Tirana prosecutor's office". Following the establishment of the High Prosecutorial Council (the governing body on matters of appointment, dismissal, promotion, transfer and disciplinary action in respect of prosecutors – hereinafter "the HPC") in December 2018, in June 2019 the Tirana prosecutor's office sought the HPC's opinion on whether or how to implement the Administrative Court of Appeal's judgment of 8 November 2018 as regards annulment of the suspension order in respect of the second applicant. As at October 2019, no

reply had been received. According to the Government, the second applicant did not submit a request to the HPC or the Prosecutor General's Office for enforcement of the judgment.

16. The Tirana prosecutor's office continued to pay the second applicant's monthly salary throughout the period of his suspension. Following a letter from the newly appointed Prosecutor General, in January 2020 he was requested to be present at the office and resumed his duties as prosecutor shortly thereafter.

17. The first applicant also continued to receive her salary (see paragraph 27 below). After she exercised her right to appeal before the SAC against the IQC's decision of 25 July 2018, during those appeal proceedings she was suspended *ex lege* from her duties pursuant to section 62(1) of the Vetting Act. She was then dismissed from office, her dismissal taking effect after the SAC's decision of 29 May 2019. In accordance with the same provision of the Vetting Act and Article F § 5 of the Annex to the Constitution, she received 75% of her salary during her suspension resulting from the provisions of the Vetting Act.

III. ALLEGED DISCLOSURE OF DOCUMENTS TO THE MEDIA

18. On 9 March 2018 Alpenews, an online news portal, published the following article:

> "The scandal of the former top leaders of the Prosecutor General's Office deepens. The facts and evidence of Alpenews' investigation regarding A.L., the former Prosecutor General of Albania, lead to his closest associate, [the first applicant].
>
> Only a few hours after she lost the case brought against the decision by the Interim Prosecutor General A.M. to remove her as Director of the Directorate of Foreign Relations and Decriminalisation, information came to light that is expected to shake up the justice system ...
>
> For several weeks in a row, our public opinion has been familiar with the decision ... to ban A.L. and his family's entry into the USA owing to his involvement in major corruption cases. This was accompanied by the publication of evidence and facts that showed the unrestrained life of the family of the former Prosecutor General of Albania, which worryingly exceeds the limited financial possibilities offered by two normal salaries of two Albanian State officials, the legal income declared by A.L. and his wife.
>
> This week, Alpenews published the results of the investigation that it discovered with official documents and letters signed by A.L. as to his involvement in a shady mega scheme of financial investments in real estate, bought at ridiculous prices and then resold or revalued, at dozens of times higher prices within a very short time. A scheme which, according to experts in the field, is typical of dirty money laundering.
>
> While this investigation was taking place, evidence and facts led us, apparently inevitably, to [the person who] has always been considered A.L.'s right-hand person and his closest associate at the Prosecutor General's Office, [the first applicant]. Evidence and facts that reveal a world even shadier than A.L.'s, providing us with shocking evidence about [the first applicant] and her family's assets.
>
> She tried to put in place an even more sophisticated scheme to hide assets than was revealed about A.L. Consequently, Alpenews' discovery is even more serious. A discovery that is

expected to shake up not only [the first applicant's] legal position, but perhaps the entire old justice system. The evidence will be made public by us in the coming hours and days."

19. Other articles, over forty according to the applicants, were published between March and July 2018. The first applicant complained to the International Monitoring Operation (IMO) that one member of the IQC panel in her case (S.Z.) was in a situation of conflict of interest because a relative (of the first applicant) had filed a criminal complaint against S.Z.'s husband for a serious offence, for which he was being tried. The first applicant alleged that S.Z. might have disclosed confidential information to Alpenews and asked for the alleged leak to be investigated. In her complaint to the IMO, the first applicant submitted that Alpenews had published documents relating to her father's private affairs (decisions by the Commission on restitution and compensation of property; ownership certificate for several properties; sale and purchase contracts for certain properties and leases). The IQC's chairperson initiated an investigation, requesting explanations from S.Z., another member of the IQC and two advisers. According to S.Z., the documents published in the media were not among those submitted by the first applicant to the IQC. She was unaware of the circumstances alleged by the first applicant and stated that even if they existed, they would not constitute a conflict of interest. Nevertheless, S.Z. expressed her willingness to withdraw from the IQC panel, to avoid any damage to the vetting process. A panel was set up to review S.Z.'s recusal request. On 15 March 2018 it accepted it. On 8 May 2018 the IMO refused to take disciplinary measures against S.Z. under section 17 of the Vetting Act (see paragraph 23 below). It appears that the first applicant also complained to HIDAACI but received no reply.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION OF ALBANIA

20. Under Article 179 § 7 of the Constitution, read together with Article 179/b, during a nine-year mandate, the Special Appeal Chamber ("the SAC") exercises disciplinary jurisdiction over all judges of the Constitutional Court, members of the High Judicial Council and High Prosecutorial Council ("the HPC"), the Prosecutor General and the High Inspector of Justice. The SAC examines appeals against decisions by the High Judicial Council, the HPC and the High Inspector of Justice, imposing disciplinary measures (*masa disiplinore*) on judges, prosecutors and other inspectors respectively (see also paragraph 28 below).

21. Article F of the Annex to the Constitution provides that during the examination of a vetting appeal by the SAC, the person being vetted receives 75% of his or her salary; a final decision ordering dismissal from office has *ex lege* immediate effect; and a person being vetted who appeals against the disciplinary measure of dismissal is suspended from his or her duties pending the SAC's decision. In practice, persons being vetted have been considered suspended from the moment of a dismissal decision by the IQC, given the possible delays in the serving of a reasoned decision on vetting subjects.

22. Under Article Ç of the Annex to the Constitution, the burden of proof shifts to the person being vetted only for the vetting process, excluding any other process, in particular, criminal proceedings.

II. LAW No. 84/2016 ON THE TRANSITIONAL RE-EVALUATION OF JUDGES AND PROSECUTORS ("THE VETTING ACT")

23. Under section 16, members of the vetting bodies are liable to disciplinary action for, *inter alia*, breaching the obligation of confidentiality and non-disclosure of information resulting from an ongoing or completed investigation or trial, including the publication and disclosure, even owing to negligence, of confidential decisions, information or procedural decisions, resulting from the matters in the process of investigation or trial, as well as for making public statements, including through the media, on matters, except for press communications within the scope of their duties. Under section 17, if there is sufficient evidence from reliable sources that a member has committed a disciplinary offence, a disciplinary investigation may be initiated following a request from another member of the same vetting body, or by an international observer against a Public Commissioner, a Commissioner or SAC members.

24. Under section 28, members of the vetting bodies and their staff must handle all information related to the vetting process in compliance with the principle of confidentiality and personal data protection. The vetting bodies are exempt from this obligation only in cases where the information is given to the person being vetted or to bodies legally entitled to request such information by reason of their official duties.

III. LAW No. 96/2016 (STATUS OF JUDGES AND PROSECUTORS ACT)

25. Under section 151, entitled "Mandatory Suspension", a magistrate (judge or prosecutor) is suspended from office upon the decision of the relevant Council if, *inter alia*, he or she has been identified as a defendant (*të pandehurit*) in a case involving a serious crime committed with intent (*një krim të rëndë të kryer me dashje*). Suspension lasts until the termination of the criminal proceedings or the adoption of a final judicial decision.

26. Under section 155, a magistrate (judge or prosecutor) may appeal against a decision to suspend him or her from his or her duties to the competent court; such an appeal does not suspend execution of the suspension order.

27. Under section 157, a magistrate receives his or her full salary during suspension, except in specific cases. In particular, where a magistrate is convicted of a criminal offence by a first-instance court or a disciplinary measure is imposed by the competent Council in connection with misconduct, that Council may suspend the payment of salary up to 50% and other benefits to the magistrate, pending the determination of any appeal to a higher court. If the decision rendered by a higher court is in favour of the magistrate, any sums withheld must be paid to him or her without delay. If the decision rendered by a higher court is not in favour of the magistrate, the sums may be withheld until the relevant criminal or disciplinary case is decided by a final decision.

28. Under section 160, until the establishment of the HPC, the Prosecutor General was to continue to exercise the Council's competences under that Law, including the suspension of prosecutors.

IV. LAW No. 115/2016 ON THE GOVERNING BODIES OF THE JUDICIAL SYSTEM

29. Under section 192(1), as amended in 2019, unless otherwise provided for by law, an individual administrative decision by the High Judicial Council or HPC may be challenged before the Administrative Court of Appeal. Individual administrative decisions imposing disciplinary measures on prosecutors may be challenged before the Constitutional Court (see also paragraph 20 above).

THE LAW

I. ALLEGED ABUSE OF THE RIGHT OF APPLICATION

30. The Government argued that the applicants had abused their right of application because they had not informed the Court of the judgment of 8 November 2018 and had stated to it that HIDAACI had identified no issues with their periodic declarations of assets.

31. The applicants disagreed.

32. An application may be rejected as an abuse of the right of application if, *inter alia*, it was knowingly based on untrue facts with a view to deceiving the Court (see *X and Others v. Bulgaria* [GC], no. 22457/16, § 145, 2 February 2021, and *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 172, 28 June 2018). The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014). The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 63, 15 September 2009, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 97, ECHR 2012). Even in such cases, the applicant's intention to mislead the Court must be established with sufficient certainty (see *Centro Europa 7 S.r.l. and Di Stefano*, § 97, and *Gross*, § 28, both cited above).

33. In December 2018 the applicants promptly informed the Court of the judgment of 8 November 2018. Even assuming the matters relating to the periodic declarations of assets could, albeit to a limited extent, relate to the essential facts relating to the scope of the case before the Court (see paragraphs 34, 45, 72 and 80 below), there is no reason to consider that the applicants attempted to deceive or mislead it. The Court has not been prevented from ruling on the case in full knowledge of the facts. The Government's objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicants complained that the SAC, which had refused to deal with the merits of their challenge against the suspension orders, had not been an independent and impartial tribunal. They relied on Article 6 of the Convention, the relevant part of which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

A. The parties' submissions

1. The Government

35. The Government argued that the SAC had been an impartial and independent tribunal. The judgment of 8 November 2018 by the Administrative Court of Appeal in Tirana had been favourable to the applicants, depriving them of their victim status before the Court. The Government also informed the Court that the second applicant had resumed his official duties in January 2020.

2. The applicants

36. The applicants argued that the SAC had not been an impartial and independent tribunal (see, in the same vein, *Xhoxhaj v. Albania*, no. 15227/19, §§ 260-65, 9 February 2021) and that the panel in their case had lacked impartiality because of I.R.'s inclusion in the composition. The judgment of 8 November 2018 had not been sufficient to deprive them of their victim status under Articles 6 and 8 of the Convention. The adequacy and sufficiency of redress depended on the specific circumstances of the case such as the nature of the right, the reasons given for the decision, the amount of compensation and the persistence of the unfavourable consequences for the person concerned after that decision. They had been suspended because of the mere opening of a bogus criminal investigation for alleged inconsistencies in their declarations.

37. The first applicant was the only magistrate in Albania who, while the vetting proceedings had been pending, had also been subject to criminal proceedings and suspended from official duties. In all other cases, the relevant prosecutor's offices had refused to initiate a criminal investigation while the vetting process was ongoing. Her suspension had had a disruptive impact on the vetting process and weighed heavily in the IQC's decision, which had referred to that suspension and dismissed her from office based on the same facts for which she was, at the same time, being investigated in the criminal proceedings. The judgment of 8 November 2018 had been adopted too late because after the IQC's decision in July 2018 she had been suspended *ex lege* pursuant to the Vetting Act.

38. In the applicants' observations filed in April 2019, the second applicant argued that while the judgment of 8 November 2018 had been immediately enforceable, the competent authorities had unlawfully refused to reinstate him. The Government had offered no explanation for the failure to enforce that judgment. The second applicant had not benefited from that judgment, which, in the absence of enforcement, had not been an effective and appropriate redress for the purposes of Article 34 of the Convention. Because of his ongoing suspension, he had been prevented from participating in the election of the members of the HPC in December 2018.

3. The third-party intervener

39. The third-party intervener's submissions are summarised in *Xhoxhaj* (cited above, §§ 276-79).

B. The Court's assessment

40. Assuming Article 6 § 1 of the Convention is applicable to proceedings in which public prosecutors challenge their *ex lege* suspensions from office (compare *Paluda v. Slovakia*, no. 33392/12, §§ 33-34, 23 May 2017; *Camelia Bogdan v. Romania*, no. 36889/18, § 70, 20 October 2020; *Loquifer v. Belgium*, nos. 79089/13 and 2 others, § 41, 20 July 2021; and *Juszczyszyn v. Poland*, no. 35599/20, § 137, 6 October 2022), the applicants' complaints in the present case are, in any event, inadmissible for the following reasons.

41. In so far as the applicants complained to the Court in June 2018 that they had been denied access to a court before the SAC, it appears that their case was left without examination because the suspension pursuant to section 151 of the Status of Judges and Prosecutors Act was outside the competence of the SAC in relation to ordinary disciplinary proceedings. The SAC specified that the appropriate avenue for judicial review was before the Administrative Court of Appeal. The applicants subsequently used that opportunity and obtained, in November 2018, the examination of their case on the merits, thereby exercising their right of access to a court. Moreover, it is noted that they obtained the outcome that they considered to be satisfactory (compare *Antonyuk v. Russia*, no. 47721/10, § 105, 1 August 2013). Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

42. As to independence and impartiality, first, concerning the arguments pertaining to the SAC as an institution, the Court dealt with the matter in *Xhoxhaj* (cited above, §§ 309-16). After examining the parties' submissions in the present case, the Court finds no reason to depart from the findings made in *Xhoxhaj*. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

43. Second, as to the arguments relating to the SAC panel in the applicants' case, the Court considers that, in the circumstances of the case, the applicants suffered no significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention (see *Kapustina v. Russia* (dec.), no. 56109/13, §§ 12 and 19-25, 7 June 2022, and *C.P. v. the United Kingdom* (dec.), no. 300/11, § 41, 6 September 2016). The impugned proceedings before the SAC panel concerned and resulted in the determination of the issue of jurisdiction. The applicants' claim was then examined by a different court, for which no issue of "a fair hearing by an independent and impartial tribunal" was raised. They obtained a favourable outcome as regards the merits of their claim. Furthermore, respect for human rights as defined in the Convention does not require an examination of this complaint on the merits. The Court has previously examined similar issues, including in the context of a judge's recusal (see, among other authorities, *Alexandru Marian Iancu v. Romania*, no. 60858/15, § 69, 4 February 2020, and *Paixão Moreira Sá Fernandes v. Portugal*, no. 78108/14, §§ 90-94, 25 February 2020). The applicants' complaint does not raise any question of principle or any new legal issues, including issues of a structural nature (see, in this connection, *Xhoxhaj*, cited above, §§ 309-16). Accordingly, it must be rejected in accordance with Article 35 §§ 3 (b) and 4 of the Convention.

44. Noting the nature of the complaints, the above findings are not affected by the matters relating to the immediate execution of the suspension orders or ensuing enforceability or enforcement of the judgment of 8 November 2018. These findings are also without prejudice to

the assessment of those matters in so far as they may be relevant for the complaint under Article 8 of the Convention (see below).

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF SUSPENSION FROM OFFICE

45. The applicants complained that their suspension from office based on the suspension orders of 11 May 2018 had violated their right to respect for their private life. They relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. *The parties' submissions*

46. The Government repeated their submissions under Article 6 of the Convention (see paragraph 35 above), arguing as follows. The applicants had been suspended *ex lege* after they had been charged in the criminal proceedings against them. As required by the applicable legislation, that suspension had to apply until the termination of those proceedings or the adoption of a final judicial decision. Throughout that period, they had continued to receive their salaries. The applicants had had the opportunity to seek a judicial review of the suspension orders and had been successful. They had lost their victim status under Article 8 of the Convention.

47. The applicants repeated their submissions under Article 6 of the Convention (see paragraphs 36-38 above), arguing as follows. Their abrupt suspension from their duties constituted an interference with their rights under Article 8 § 1 of the Convention which had not been "in accordance with the law" within the meaning of Article 8 § 2, as confirmed by the judgment of 8 November 2018. The criminal investigation against them had been discontinued for lack of evidence of any wrongdoing and, more importantly, because no investigation could be initiated against an official subject to the vetting proceedings. Their reputation, honour and career had suffered an irreversible blow, also due to the extensive media campaign ramped up against them. The suspension had had a negative impact on the first applicant's vetting process.

2. *The Court's assessment*

(a) General principles

48. The general principles regarding the applicability of Article 8 to employment-related disputes were summarised by the Court in *Denisov v. Ukraine* ([GC], no. 76639/11, 25 September 2018) as follows:

"115. ... employment-related disputes are not *per se* excluded from the scope of 'private life' within the meaning of Article 8 of the Convention. There are some typical aspects of private life which may be affected in such disputes by dismissal, demotion, non-admission to a profession or other similarly unfavourable measures. These aspects include (i) the applicant's 'inner circle', (ii) the applicant's opportunity to establish and develop relationships with others, and (iii) the applicant's social and professional reputation. There are two ways in which a private-life issue would usually arise in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach).

116. If the consequence-based approach is at stake, the threshold of severity with respect to all 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. The applicant has to present evidence substantiating consequences of the impugned measure. The Court will only accept that Article 8 is applicable where these consequences are very serious and affect his or her private life to a very significant degree.

117. The Court has established criteria for assessing the severity or seriousness of alleged violations in different regulatory contexts. An applicant's suffering is to be assessed by comparing his or her life before and after the measure in question. The Court further considers that in determining the seriousness of the consequences in employment-related cases it is appropriate to assess the subjective perceptions claimed by the applicant against the background of the objective circumstances existing in the particular case. This analysis would have to cover both the material and the non-material impact of the alleged measure. However, it remains for the applicant to define and substantiate the nature and extent of his or her suffering, which should have a causal connection with the impugned measure. Having regard to the rule of exhaustion of domestic remedies, the essential elements of such allegations must be sufficiently raised before the domestic authorities dealing with the matter."

(b) Application of the general principles to the present case

49. On 11 May 2018 the Interim Prosecutor General issued suspension orders in respect of the applicants, immediately preventing them from exercising their official duties as prosecutors (compare, as regards judges, *Camelia Bogdan*, § 70, and *Juszczyszyn*, § 236, both cited above). Those orders were based on the fact that there was an ongoing criminal investigation against them for a "serious crime committed with intent" and on the fact that they had been charged. Suspension was mandatory once a magistrate obtained the status of defendant in a criminal investigation for that type of offence and lasted until the termination of the criminal proceedings or the adoption of a final judicial decision (see paragraph 25 above).

50. The investigation and criminal charges were related to alleged misconduct in relation to periodic declarations of assets and further declarations made within the then ongoing vetting process in respect of the first applicant, namely in the context of the assessment of her and her spouse's (the second applicant's) assets, both being public officials subject to the declaration requirement. That alleged misconduct was related to their legal obligations relating to financial

propriety within their spousal relationship and in transactions with others. The applicants did not argue that their right to respect for family life was at stake. As to the right to respect for "private life", the Court does not consider that the underlying reasons for the suspension orders were linked to the applicants' private life as they concerned matters related to their financial integrity as public officials and their compliance with criminal law (compare *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 71, ECHR 1999-VI; *Özpınar v. Turkey*, no. 20999/04, §§ 43 and 47, 19 October 2010; and *Sodan v. Turkey*, no. 18650/05, §§ 47-49, 2 February 2016). It remains to be ascertained whether the consequence-based approach brings the issue under Article 8 of the Convention in the present case (compare *Xhoxhaj*, cited above, § 362, on private-life consequences related to dismissal from office in the vetting process).

51. In November 2018 the Administrative Court of Appeal, acting as a first-instance court in the matter, acknowledged that the suspension orders were not in compliance with Albanian law. The Court notes the findings made by that court: (i) that suspension pursuant to section 151 of the Status of Judges and Prosecutors Act could only be related to a "serious crime committed with intent"; and (ii) that the offence under Article 257/a of the Criminal Code with which the applicants had been charged was outside the scope of that notion under Albanian law. The case concerned the interpretation of a new provision of legislation in force since 2016. Moreover, that legislation was applied in a situation where vetting proceedings were also ongoing. It appears that the court's interpretation of the law did not have the benefit of having been tested before the Supreme Court (see *Bara and Kola v. Albania*, nos. 43391/18 and 17766/19, §§ 23-29, 12 October 2021). The Court reiterates, in this connection, that the role of adjudication vested in the courts is to dissipate interpretational doubts; there must come a day when a given legal norm is applied for the first time (see, *mutatis mutandis*, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, §§ 250 and 253, 22 December 2020).

52. It is in the first place for the national authorities, notably the courts, to interpret and apply national law (ibid., § 249). Taking note of the domestic classification of the criminal offence, the Court also reiterates its findings on the legitimate aims pursued, particularly within the vetting process in Albania, as well as on the related legal obligations incumbent on prosecutors, such as the obligation to make a complete and truthful declaration of assets (compare *Wypych v. Poland* (dec.), no. 2428/05, 24 October 2005) and, by implication, on the need for proportionate measures aimed at enforcing compliance with those obligations, including through disciplinary or other liability for serious misconduct consisting in non-compliance with them (see *Xhoxhaj*, cited above, § 221).

53. The decision to open the criminal investigation and charge the applicants, which was not specifically challenged before the Court under Article 8 of the Convention, as well as their suspension arising from that decision, were subject to rather extensive online media coverage (see paragraph 19 above). In the eyes of at least some members of society, the applicants' ability to continue to perform their prosecutorial functions might have been questioned. The suspension orders were, albeit to an indirect extent, capable of adversely affecting their professional reputation in the eyes of the public. At the same time, they were entitled to the presumption of innocence. While the applicants' income situation did not change significantly and their "inner circle" was thus unaffected in that regard, the suspension deprived them of the opportunity to continue their work and live in the professional environment where they could pursue their goals of professional and

personal development (see *Juszczyszyn*, cited above, § 235, and *Gumenyuk and Others v. Ukraine*, no. 11423/19, § 88, 22 July 2021).

54. It is also noted that under the judgment of 8 November 2018 the applicants received their costs from the Prosecutor General's Office.

55. At this juncture, the Court notes that despite certain similarities as specified above, the applicants' situation differs as regards the admissibility of the complaint under Article 8 of the Convention.

(i) Applicability of Article 8 of the Convention

(α) The first applicant

56. The first applicant was prevented from exercising her duties as a prosecutor in the context of criminal investigations from 11 May to 25 July 2018, when the IQC announced its decision to dismiss her from office and she was suspended *ex lege* pursuant to section 62(1) of the Vetting Act. It is not in dispute between the parties that the alleged adverse effect on her "private life" arising from the Interim Prosecutor General's suspension order was no longer at stake after the IQC's decision in the vetting proceedings. The alleged "interference" therefore lasted two and a half months. It has not been contested that during that period she continued to receive her salary (see paragraph 27 above).

57. As to the first applicant's argument that her suspension had a disruptive impact on the vetting process and weighed heavily in the IQC's decision to dismiss her from office, the Court notes that she did not substantiate that argument, beyond the fact that the suspension was mentioned, as a matter of fact, when indicating her employment status at the time.

58. The Court reiterates that within the consequence-based approach an applicant has to present evidence substantiating consequences of the impugned measure, and that these consequences must be very serious and affect his or her private life to a very significant degree (see *Denisov*, cited above, § 116). The Court considers that the first applicant has not demonstrated that the negative consequences arising from the suspension order were sufficiently serious for her right to respect for her private life under Article 8 of the Convention to be at stake (see *Camelia Bogdan*, cited above, § 86; *Miroslava Todorova v. Bulgaria*, no. 40072/13, §§ 136-45, 19 October 2021; and *J.B. and Others v. Hungary* (dec.), nos. 45434/12 and 2 others, §§ 130-38, 27 November 2018). Any other adverse impact, for instance on reputation, was mostly due to being charged with a criminal offence rather than to the *ex lege* suspension, albeit with the continued payment of salary. Accordingly, her complaint is 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.

(β) The second applicant

59. The second applicant was suspended from 11 May to 8 November 2018. The judgment issued on the latter date then remained unenforced with respect to him, without any clear reason, until late January 2020, that is, for a considerable period, given the nature of the dispute relating to employment. The Government have not shown why the involvement of the HPC was

indispensable under Albanian law to give effect to the judgment (see paragraphs 14-16 above). In any event, there is no indication that it took any decision in that regard. Since the Administrative Court of Appeal acted as a court of first instance in the case, it is possible that a question could arise as to whether its judgment was immediately enforceable (*merr formë të prerë*). However, the Government have not put forward any substantiated argument in this regard. The second applicant was unjustifiably prevented from benefiting from the outcome of his litigation, by resuming his official duties. Overall, he was prevented from exercising his official duties for over twenty months.

60. It is worth noting that, within that period, the situation complained of persisted even after the criminal proceedings against the second applicant had been terminated by a court in April 2019 (compare *Gumenyuk and Others*, cited above, § 88). He remained deprived of the opportunity to resume his work and live in the professional environment where he could pursue his goals of professional and personal development (see *Juszczyszyn*, § 235, and *Gumenyuk and Others*, § 88, both cited above). The extended delay in enforcing the judgment in his favour must have added to the precariousness of his position.

61. Considering the developments in the domestic proceedings, the Court concludes that the second applicant has demonstrated that the negative consequences became sufficiently serious for his right to respect for his private life under Article 8 of the Convention to be at stake. The Court also considers that he has not lost victim status as regards this complaint.

(ii) Exhaustion of domestic remedies by the second applicant

62. Furthermore, the Government argued that before lodging the complaint with the Court in June 2018, the applicants had not exhausted domestic remedies by bringing a case before the Administrative Court of Appeal. The Court does not exclude the possibility that there was some uncertainty at the time as to the specific judicial avenue for contesting a suspension order (see paragraphs 20, 26, 28 and 29 above), especially in view of the fact that the suspension order referred, as it then turned out incorrectly, to an appeal before the SAC as the appropriate remedy (see paragraph 11 above). Be that as it may, the second applicant did exhaust the remedy mentioned by the Government, shortly after lodging the complaint with the Court and after raising arguments on the alleged lack of an effective remedy (see paragraph 80 below). In the circumstances, and as the case stands now when the admissibility of the complaint is being examined after the domestic developments, the Court is not prepared to dismiss it for failure to exhaust domestic remedies (compare *Delijorgji v. Albania*, no. 6858/11, § 55, 28 April 2015). The Government's objection is thus dismissed.

(iii) Conclusion

63. The Court concludes that the first applicant's complaint is inadmissible *ratione materiae*.

64. It further notes that the second applicant's 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.

B. Merits

65. Having regard to the findings in paragraphs 59-61 above, the Court considers that there has been an "interference" with the second applicant's right to respect for his private life under Article 8 of the Convention on account of his suspension by the Interim Prosecutor General from exercising his duties as a prosecutor.

66. Such an interference will be in breach of Article 8 unless it can be justified under paragraph 2 of that provision as being "in accordance with the law", pursuing one or more of the legitimate aims listed therein and being "necessary in a democratic society" in order to achieve those aims (see *Xhoxhaj*, cited above, § 378).

67. The phrase "in accordance with the law" requires the impugned measure to be compatible with the rule of law (see *Selahattin Demirtaş*, cited above, § 249). Members of the judiciary should enjoy – as do other citizens – protection from arbitrariness on the part of the executive powers (see *Grzęda v. Poland* [GC], no. 43572/18, § 327, 15 March 2022, and *Kövesi v. Romania*, no. 3594/19, § 124, 5 May 2020).

68. The Court notes that the second applicant's *ex lege* suspension from 11 May 2018 onwards was based on the fact that there was an ongoing investigation against him for a "serious crime committed with intent". It appears from the available material that that concept raised an issue of interpretation of a new provision of Albanian law (see paragraph 12 and 51 above), notably as to what constituted a "serious crime" for the relevant purposes. It is also noted that section 151 of the Status of Judges and Prosecutors Act provided that an *ex lege* suspension would apply until the termination of the criminal proceedings or the adoption of a final judicial decision in the criminal case. By implication, the longer such a suspension persisted, the more serious the implications could be, both for the person's private life and potentially for the rule of law. Furthermore, the Court has already noted that there appeared to be some uncertainty at the time concerning the appropriate legal avenue for challenging an *ex lege* suspension, as well as concerning the immediate enforceability of a judgment adopted by the Administrative Court of Appeal in favour of a suspended magistrate. It appears that the Prosecutor General's appeal against that court's ruling in the applicants' case is still pending before the Supreme Court.

69. Be that as it may, as to the period from 18 April 2019, when the Vlore Court of Appeal confirmed the termination of the criminal investigation against the applicants, to January 2020, when the second applicant resumed his work as a prosecutor, the Court finds that the second applicant's continued suspension was devoid of any legal basis since there was no longer an ongoing criminal investigation against him (see paragraphs 25, 59 and 60 above). The Government have not referred to any other legal basis for continuing to prevent him from resuming his work as a prosecutor.

70. In view of the foregoing, the Court is not satisfied that the interference was "in accordance with the law", at least as regards the period after 18 April 2019.

71. There has therefore been a violation of Article 8 of the Convention in respect of the second applicant.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF DISCLOSURE OF DOCUMENTS TO THE MEDIA

72. The first applicant alleged that certain documents had been disclosed to the media, in breach of Article 8 of the Convention (quoted above).

A. The parties' submissions

73. The Government argued that the first applicant had not exhausted domestic remedies by lodging a complaint with the Personal Data Protection Commissioner or bringing a civil lawsuit for compensation for damage sustained because of the authorities' misconduct. There had been no interference under Article 8 of the Convention because there had been no unlawful disclosure by a public authority or official – the online publication(s) had contained no information which was confidential or inaccessible to the general public through other means. The applicant had never objected to or complained that her declaration of assets had been made public, focusing on the disclosure of information or documents relating to her brother-in-law and her father. Those documents had not been submitted by the applicant to the IQC and had, in any event, been easily accessible by the public.

74. The first applicant argued that the Government had not shown that a complaint or civil lawsuit based on the allegation of unlawful disclosure within the adjudication of the vetting process would have had prospects of success. The identity of the person responsible for the alleged damage would have had to be known. In any event, the applicant had repeatedly requested the bodies involved in the vetting (the IMO, the IQC and HIDAACI) to investigate the leak.

B. The Court's assessment

75. The scope of a case referred to the Court within the meaning of Article 32 of the Convention in the exercise of the right of individual application is determined by the applicant's complaint. A complaint consists of factual allegations and legal arguments. The Court cannot base its decision on facts that are not covered by the complaint and decide beyond the scope of a case, that is, on matters that have not been referred to it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). Even where no plea of inadmissibility – as regards a specific complaint – concerning compliance with the six-month rule (as applicable at the time) was made by the Government in their observations, it is not open to the Court to set aside the application of that rule solely because they have not made a preliminary objection to that effect (ibid., § 138). The complaints an applicant proposes to make must contain all the parameters necessary for the Court to define the issue it will be called upon to examine, as will the Government should the Court decide to invite them to submit observations on the admissibility and/or merits of the case (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 104, 6 November 2018, in the context of Article 6 of the Convention).

76. The Court notes that, in the application form submitted in June 2018, the applicants indicated that "the confidential information [had been] published on Alpenews", referring to and enclosing an article published on 9 March 2018 (see paragraph 18 above). They also indicated that it "[had been] followed by a merciless media campaign against [the first applicant], openly attacking her [on] an arbitrary and selective interpretation of the information concerning her assets". The related complaint was then phrased as follows: "the leak of confidential information submitted to the IQC

in the context of the vetting process amount[ed] to an unlawful and disproportionate interference with [the first applicant's] right to privacy under Article 8 of the Convention. In particular ... the confidential information concerning her assets [had been] published on Alpenews ... The publication [had been] followed by a merciless media campaign against [her]."

77. In so far as the article referred to is concerned, it contained no disclosure of any documents or material related to the first applicant, apart from the text quoted in paragraph 18 above. It has not been shown that, in relation to the first applicant's complaint based on that one article, there was any "interference" on the part of any agent of the respondent State, namely on account of unauthorised access to – and/or unlawful disclosure or transmission of – any specific confidential document submitted or obtained within the vetting process (compare *Căşuneanu v. Romania*, no. 22018/10, §§ 83-84 and 97, 16 April 2013, and *M.D. and Others v. Spain*, no. 36584/17, § 65, 28 June 2022). It has not been shown that that article contained any sensitive information relating to the first applicant or her assets. Accordingly, the complaint as submitted is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

78. As regards the disclosure of any additional documents to the media and a media campaign between March and July 2018, for the following reasons, the Court does not need to determine whether domestic remedies were exhausted. Those factual allegations were neither detailed nor substantiated in the application form. It was only in April 2019 in their observations in reply to the Government's observations that the applicants (essentially, the first applicant) provided the "gist of the complaint" (as they put it), articulating the essential factual elements, citing specific examples of other articles, some of which were allegedly based on or reproduced from copies of leaked documents, and submitted copies of those articles. In the same observations the applicants also argued, for the first time, that the media outlet(s) had published confidential information in 2018, thereby violating their rights under Article 8 of the Convention. That grievance was directed against one or several privately owned media outlets that had published the impugned information. The Court considers that the above-mentioned complaint was only lodged in April 2019. The applicants have not specified whether it was subject to recent domestic proceedings for the purposes of the six-month rule, for instance, in respect of any media outlet or its owners or public officials (see paragraph 19 above). Accordingly, the complaint was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention, as in force at the material time.

79. Lastly, in the applicants' observations, the first applicant alluded to another subject matter concerning a contemporaneous fact, namely the disclosure and publication, in April 2019, of a confidential background-check report issued within the vetting process. The Court considers that this submission was not an elaboration of the initial complaint and that it falls outside the scope of the case before it (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, §§ 101-02 and 110-11, 1 June 2021, and *Antonyuk*, cited above, § 94). The Court concludes that there is no need to examine that submission in the present case.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

80. The applicants complained in June 2018 that they had had no effective remedy, in breach of Article 13 of the Convention, for their complaint under Article 8 of the Convention concerning the suspension orders. Having examined the parties' observations and in view of the Court's findings in paragraphs 41 and 63 above, the complaint under Article 13 is inadmissible under Article 35 § 3 (a) of the Convention and must therefore be rejected pursuant to Article 35 § 4 as regards the first applicant. In view of the findings in paragraph 71 above, it is not necessary to examine this complaint as regards the second applicant.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. In their observations, the applicants also alleged as follows.

(a) The respondent State had not informed the Court of the outcome of the appeal regarding the judgment of 8 November 2018. In the light of all the material in its possession (see also paragraphs 12, 14 and 16 above), the Court considers that the respondent State has not failed to comply with its obligation under Article 38 of the Convention.

(b) "The chain of events leading up to" their suspension from office amounted to a politically motivated retaliation, in breach of Article 18 of the Convention. Having regard to the relevant case-law (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 291, 28 November 2017, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 154 et seq., 15 November 2018) and in the light of all the material in its possession, and in so far as the matters complained of are within its competence (see also paragraphs 41 and 63 above), the Court finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(c) The first applicant's dismissal from office in the vetting proceedings also amounted to a politically motivated retaliation, in breach of Article 18 of the Convention. The Court notes that complaints relating to the decisions of 25 July 2018 and 29 May 2019 were not part of the case communicated to the respondent Government. The first applicant has lodged separate applications under Rule 47 § 1 of the Rules of Court read together with the Practice Direction on the Institution of Proceedings (in particular, paragraphs 1-5). Those applications are pending before the Court. There is therefore no need to examine those submissions in the present case.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

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

A. Damage

83. The second applicant claimed 200,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,350 in respect of pecuniary damage in relation to his demotion in early 2018.

84. The Government contested the claims, arguing, *inter alia*, that the second applicant had not brought a civil claim for damages.

85. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. The Court is empowered to afford the injured party such satisfaction as appears to it to be appropriate, as follows from Article 41 of the Convention, if national law does not allow – or allows only partial – reparation to be made. At the same time, the rule on exhaustion of domestic remedies under Article 35 § 1 does not apply to just satisfaction claims under Article 41 (see *Nagmetov v. Russia* [GC], no. 35589/08, § 66, 30 March 2017, and *Tërshana v. Albania*, no. 48756/14, § 176, 4 August 2020). The Court awards the second applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

86. The second applicant, together with the first applicant, claimed EUR 57,608 for the costs and expenses incurred in relation to the case before the Court (see paragraphs 34, 45, 72 and 80 above) and the filing of further submissions (see paragraphs 78-79 and 81 above).

87. The Government contested the claim.

88. An applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. Regard being had to the documents in its possession and the above criteria, and in so far as the claim is related to one admissible complaint resulting in the finding of a violation in respect of the second applicant (see *Bici v. Albania*, no. 5250/07, § 59, 3 December 2015), the Court considers it reasonable to award him EUR 3,000, plus any tax that may be chargeable to him.

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the second applicant's complaint under Article 8 of the Convention concerning his suspension from office admissible;
2. *Declares*, by a majority, the first applicant's complaints under Articles 8 and 13 and both applicants' complaints under Articles 6 and 18 of the Convention inadmissible;
3. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention in respect of the second applicant;
4. *Holds*, by six votes to one, that the respondent State has complied with its obligation under Article 38 of the Convention;
5. *Holds*, by six votes to one, that there is no need to examine the second applicant's complaint under Article 13 of the Convention and the additional submissions made by the applicants;
6. *Holds*, unanimously,

(a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the second applicant, in respect of costs and expenses;

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

7. *Dismisses*, by six votes to one, the remainder of the claim for just satisfaction.

Done in English, and notified in writing on 4 April 2023, 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 second applicant's complaint under Article 8 of the Convention concerning his suspension from office is admissible, and I also agree with point 3 of the operative provisions to the effect that there has been a violation of Article 8 of the Convention in respect of the second applicant's suspension from office. In addition, I agree with point 6 of the operative provisions regarding the awards in respect of non-pecuniary damage and costs and expenses.

2. I disagree, however, with point 2 of the operative provisions of the judgment holding that the first applicant's complaints under Articles 8 and 13 and both applicants' complaints under Articles 6 and 18 of the Convention are inadmissible. I also disagree with points 4, 5 and 7 of the operative provisions of the judgment.

3. As regards points 2, 4, 5 and 7 of the operative provisions of the judgment, rather than issuing a fully-fledged separate opinion or voting anonymously against those points, I have chosen to append this "bare statement of dissent" – a mere statement of disagreement with part of the judgment, one of the modes of expressing dissent to which judges are entitled under Rule 74 § 2 of the Rules of Court.