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

THIRD SECTION

DECISION

Application no. 16701/19
Fatmir HOXHA
against Albania

The European Court of Human Rights (Third Section), sitting on 15 October 2024 as a Committee composed of:

Ioannis Ktistakis*, President*,
Darian Pavli,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 16701/19) against the Republic of Albania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 11 March 2019 by an Albanian national, Mr Fatmir Hoxha ("the applicant"), who was born in 1968, lives in Tirana and was represented by Mr E. Merkuri, a lawyer practising in Tirana;

the decision to give notice of the complaints concerning the right to a fair hearing to the Albanian Government ("the Government"), represented by Mr O. Moçka, State Advocate General, and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by Res Publica, which had been granted leave to intervene by the President of the Section;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns vetting proceedings resulting in the applicant's dismissal from the judiciary.

2. The applicant had been a judge since 1991 and most recently a judge of the Constitutional Court of Albania. In 2011 he purchased a flat in Tirana.

Being subject to a periodic declaration of assets and other private interests since 2003, in his 2011 statement he declared a loan of 28,500 euros (EUR) taken in February 2011 from A.G., his brother-in-law, to finance the purchase.

3. Within the vetting process before the Independent Qualification Commission (IQC) and the Special Appeal Chamber (SAC) (see *Xhoxhaj v. Albania*, no. 15227/19, 9 February 2021), in 2017 the applicant declared that flat in the vetting declaration of assets as acquired with a substantial bank loan, his and his wife's income and the proceeds from the sale of another flat.

4. The IQC requested that A.G. prove both the fact of the loan and "the lawful source of income for the loan" (*ligjshmërinë e burimit të të ardhurave të dhëna hua*). According to A.G.'s replies at the IQC interview in February 2018, the funds had been generated through savings from his gainful activities from 1994 to 1997 consisting of importing second-hand goods (such as clothes and vehicles) from Italy (see also paragraph 10 below). When asked whether he had been "registered" with the authorities for a commercial profit-making activity, A.G. stated, in substance, that he had operated as a private individual, importing under the rules applicable to personal needs and had paid a "weight tax" at the customs. In 2011 he had withdrawn the money from his bank account and had handed it over to his sister (the applicant's wife) with a view to buying the flat. When asked to produce the relevant documents, A.G. stated that he no longer had them and invited the IQC to make requests to the Customs Office and other authorities.

5. The IQC sent a questionnaire to the applicant enquiring whether the loan from A.G. had been a source for acquiring the flat, as indicated in his 2011 declaration, and asking him to submit all the documents relevant to receipt and repayment of the loan. The applicant replied that the loan had been used to buy the flat; that due to the family relationship no written contract had been concluded; and that he had repaid the loan in instalments between 2011 and 2014.

6. Following the closure of the investigation, on 19 March 2018 the IQC provided the applicant with a report, which stated as follows:

> "The loan received from your brother-in-law, [A.G.], was not declared in the vetting declaration as one of the sources [for acquiring the flat] ... replying to our question, [you stated]: 'Loan received from my brother-in-law ... was one of the sources used for the purchase ...' "

7. The IQC then shifted the burden of proof to the applicant in relation to the assets mentioned in the report and gave him a deadline to respond and produce supporting documents. The applicant had access to the case file, including the testimony by A.G. (see paragraph 4 above).

8. The applicant was represented by a lawyer at a hearing before the IQC. The IQC panel's rapporteur noted that the IQC's investigation had focused on the lawful source of income for the flat and that the applicant had received

the results of the preliminary investigation relating to another person and the origin of his income over the years. The applicant's lawyer raised no query as to the scope of the case at that juncture.

9. By a decision of 10 May 2018 the IQC dismissed the applicant from office, by a majority vote. In respect of the loan received from A.G., the IQC considered that: (i) in the 2011 declaration the applicant had declared the loan as a source to purchase the flat; (ii) he had not declared that loan in the vetting declaration as the source; (iii) for ascertaining the lawfulness of the sources for that asset A.G. was the applicant's "related person" within the meaning of section 3 (14) of the Vetting Act (VA); (iv) he had not justified the lawful origin of that money within the requirement of section 32 (4) of the VA; (v) A.G. referred to his bank statements and stated that he had not been registered with tax authorities and had not paid taxes. The applicant had thus made "insufficient declaration" within the meaning of section 61 (3) of the VA and failed to convincingly show the lawful source under Article D § 3 of the Annex to the Constitution.

10. The applicant appealed to the Special Appeal Chamber (SAC), arguing *inter alia* that he had declared the loan in his periodic declarations from 2012 until its repayment, and that he had not declared it in the vetting declaration because by 2017 it had already been repaid and thus could not be considered as an existing financial obligation to be declared. He sought to adduce in evidence documents such as A.G.'s passport issued in 1996; his bank deposit contract of 2010 for EUR 2,500; a letter of 13 June 2018 from the General Directorate of Customs with data on his movements from 2004 to 2010; and documents relating to sales of vehicles between 2004 and 2009 (see also paragraph 4 above).

11. On 25 September 2018 the SAC examined the appeal and upheld, by a majority vote, the IQC's decision. The SAC, relying on its rules of procedure, refused to admit the additional evidence submitted by the applicant, arguing that the applicant should have presented it during the proceedings before the IQC, and he had not convincingly justified his failure to do so. The SAC considered that since the IQC had properly established the facts, no oral hearing before the SAC was necessary; the new evidence was irrelevant or not decisive within the meaning of section 49 (6) (b) of the VA.

12. It further considered that when completing the vetting declaration in 2017, the applicant should have realised that (i) in 2011 the loan had been one of the sources for acquiring the flat and thus had to be declared in the vetting declaration; (ii) the applicant and A.G. had an obligation under Article D § 3 of the Annex to the Constitution and section 32 (1) and (4) of the VA to justify – both in the vetting declaration and during the proceedings – the lawful origin of EUR 28,500; and (iii) they had to do that irrespective of whether the IQC had raised the matter during the investigation or in its concluding report.

THE COURT'S ASSESSMENT

A. Scope of the case

13. In his application form in 2019 the applicant complained under Article 6 of the Convention that he had not received a fair hearing. Notably, his right to have knowledge of, make submissions and adduce evidence on the matters underlying the conclusions reached by the SAC, in particular as to the loan from A.G., and in respect of the burden of proof in that regard had been impaired. In 2023 these complaints were communicated to the respondent Government, while the remainder was declared inadmissible. The applicant was informed accordingly.

14. In 2024 in his observations in reply to the Government's observations on the communicated complaints, the applicant (i) elaborated on complaints that were substantially the same as the ones which had been declared inadmissible; and (ii) referred, for the first time, to other matters, which were not an elaboration of the communicated complaints. Should the applicant be understood as intending to refer to the Court new claims relating to the SAC's decision in 2018, they were not lodged in compliance with Rule 47 §§ 1, 2 and 5.1 of the Rules of Court. Those submissions fall outside the scope of the present case as it stands now, and the Court will not examine them (see *Fu Quan, s.r.o. v. the Czech Republic* [GC], no. 24827/14, §§ 137 and 144-48, 1 June 2023, and *Gashi and Gina v. Albania*, no. 29943/18, §§ 75 and 79, 4 April 2023).

B. The complaint under Article 6 § 1 of the Convention

1. The parties' submissions

15. The Government argued that the applicant had been given an opportunity to submit evidence and object to the loan-related matters on several occasions: when submitting the periodic declaration(s) of assets by declaring the loan's source; when submitting the vetting declaration where he had to declare and prove the loan's source; during and after the IQC's investigation, during the hearing before the IQC, and before the SAC.

16. The applicant argued that the communication between the IQC and A.G. on his income did not justify transferring onto him the burden of proof. The procedure could not depend on a third person's cooperation to deliver proof in that respect, as that person could be unwilling to cooperate with the vetting subject for many reasons. The IQC's report did not refer to factual or legal matters on the justification of A.G.'s funds. The panel did not make that matter an issue for discussion. The SAC did not remedy that procedural shortcoming because it refused to accept the evidence adduced by the applicant.

17. The third-party intervener argued, *inter alia*, that the correct interpretation and application of the VA should have entailed that every income-generating activity that was not illegal had to be considered as a lawful source of income.

2. The Court's assessment

18. The applicant was a party in proceedings which were disciplinary in nature and based on preliminary findings, as to the relevant points of fact and law, initially made by way of an administrative investigation (see *Thanza v. Albania*, no. 41047/19, § 97, 4 July 2023). He was required to disprove those findings, failing which he could be dismissed from office. Thus, under the civil limb of Article 6 § 1 concerning his "civil rights and obligations", he had to be afforded an adequate opportunity to oppose those findings and to plead his case in an effective manner (ibid., and *Sevdari v. Albania*, no. 40662/19, § 122, 13 December 2022).

19. The IQC considered the matters relating to the substantial loan from A.G. as a separate ground for the applicant's dismissal from office. A query on the origin of A.G.'s funds had first been raised during the investigation (see paragraph 4 above). The applicant had access to the relevant materials, including A.G.'s interview with the IQC. The report closing that investigation referred to a lack of information in the vetting declaration about the loan, but did not specify the issue of lawfulness, including payment of taxes, among the matters on which the burden of proof was shifted onto the applicant (see paragraph 6 above). The applicant appealed to the SAC, a tribunal with full jurisdiction over questions of fact and law (see *Xhoxhaj*, cited above, §§ 286, 334 and 416). The salient issue before the Court is whether the SAC afforded him an adequate opportunity to oppose the IQC's findings on the loan and to plead his case in an effective manner.

20. First, in addition to the applicant's failure to declare the loan, those findings focused on the tax-related compliance of a person outside the vetting subject's immediate family (A.G.) for income received in Albania and, moreover, on events which took place a significant period of time ago. However, as to the burden of proof under the civil limb of Article 6 § 1 (see *Thanza*, § 114; *Sevdari*, § 130; and *Xhoxhaj*, §§ 348-49, all cited above), the decisive elements on which the SAC ultimately ruled on that aspect of the case – A.G.'s obligation to pay taxes and his failure to pay them – were considered proven essentially on the basis of A.G.'s own statements to the IQC. A.G. was cooperative with the vetting subject (the applicant) and the vetting bodies and showed no obstruction or hostility, assisting him in gaining access to certain documents (see paragraph 10 above). As regards the ground for dismissal relating to the legality of A.G.'s funds, the SAC based the applicant's dismissal from office on the unrebutted factual element (non-payment of taxes due to be paid), which rendered the funds "unlawful"

for the purposes of the VA (compare *Gryaznov v. Russia*, no. 19673/03, § 61, 12 June 2012).

21. Second, it remained open to the applicant to contest the facts and put forward legal arguments before the SAC, for instance challenging A.G.'s statement or seeking its further elaboration or clarification (see paragraph 4 above). The applicant raised some arguments relating to the funds (see paragraph 10 above). The SAC dealt with the main arguments and based its decision on reasoning that was commensurate with the particular context of the case (see paragraphs 8 and 19 above) and adequate for Article 6 purposes (see *Perez v. France* [GC], no. 47287/99, §§ 80-81, ECHR 2004-I).

22. Third, as to the evidence adduced by the applicant to substantiate his claims, the SAC refused to formally admit that evidence to the file. The SAC took a stance on its remote relevance and low probative value. The evidence the applicant adduced, for the first time, before the SAC was not *prima facie* capable of challenging the IQC's finding that he had failed to prove that A.G. had paid taxes on his business income, which was in turn required to show the lawfulness of the funds for the purposes of the VA. Given A.G.'s testimony, it does not appear that the additional evidence was capable of effectively opposing that finding.

23. Lastly, the SAC's interpretation of A.G.'s statement, their factual findings relating to the loan, their application of the domestic law, as discussed in the preceding paragraphs, and their handling of the evidence were not arbitrary or manifestly unreasonable under Article 6 § 1 of the Convention and remained consistent with the requirements of a fair trial (see *Thanza*, § 102; *Sevdari*, §§ 125 and 130-31; and *Grosam*, §§ 130-32, all cited above).

24. The Court concludes that, taking the proceedings in their entirety and assessing their overall fairness, the applicant was afforded an adequate opportunity to oppose the impugned findings and to plead his case in an effective manner. His right to a fair hearing under the civil limb of Article 6 § 1 was not violated in the circumstances of the case. There is no appearance of a violation of that right as regards the other aspects of the vetting proceedings.

25. Accordingly, the applicant's complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 14 November 2024.

Olga Chernishova
Deputy Registrar

Ioannis Ktistakis
President