

Vetting of Supreme Court judge did not comply with fairness requirements

In today's Chamber judgment¹ in the case of [Thanza v. Albania](#) (application no. 41047/19) the European Court of Human Rights held that there had been:

unanimously, a violation of Article 6 (right to a fair trial) of the European Convention on Human Rights, and

by 6 votes to 1, no violation of Article 8 (right to respect for private and family life).

The case concerned the vetting of the applicant by the authorities, which had resulted in his dismissal from his post as a Supreme Court judge.

The Court found in particular, as regards Article 6, that Mr Thanza had not been given an adequate opportunity to defend himself as concerned his failure to disclose his contacts with organised-crime elements, and that the authorities' reasoning had been inadequate and too formalistic as concerned Mr Thanza's failure to declare previous criminal proceedings against himself.

However, regarding Article 8, there had been no shortcomings in the decision-making process relating to the assessment of Mr Thanza's assets that had served as a separate legal basis for his dismissal.

Principal facts

The applicant, Admir Thanza, is an Albanian national who was born in 1969 and lives in Tirana.

At the time of the events in question, Mr Thanza was a judge of the Supreme Court.

In 2016 the Albanian Government instituted judicial reforms, including a transitional re-evaluation ("the vetting process") of all sitting judges by the vetting bodies, the Independent Qualification Commission (IQC) and the Special Appeal Chamber (SAC) (see press release for [Xhoxhaj v. Albania](#) (no. 15227/19) for more detail). In January 2017 Mr Thanza submitted the standard vetting declaration forms on all three components of the vetting process (assets assessment, background assessment and an evaluation of professional competence).

In July 2018 the IQC issued its decision, subsequently upheld by the SAC, finding that Mr Thanza had not passed the assets assessment, which justified his dismissal from office. As regards the second component of the vetting process (background assessment), the SAC considered that the applicant had not declared a brief 2016 corruption investigation that which had focussed on him along with another person; that he had had inappropriate contact with "persons" involved in organised crime; that his "inclination towards criminal activities" meant that he could be "easily put under pressure by criminal structures". Those findings under the second component of the vetting process were also such as to justify his dismissal from office.

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

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

Complaints, procedure and composition of the Court

Relying on Articles 6 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy), the applicant complained, in particular, that the vetting proceedings had not included a fair and public hearing by an independent and impartial tribunal established by law, and that his dismissal prevented him from practising law.

The application was lodged with the European Court of Human Rights on 29 July 2019.

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

Pere Pastor Vilanova (Andorra), *President*,
Jolien Schukking (the Netherlands),
Georgios A. Serghides (Cyprus),
Darian Pavli (Albania),
Ioannis Ktistakis (Greece),
Andreas Zünd (Switzerland),
Oddný Mjöll Arnardóttir (Iceland),

and also Olga Chernishova, *Deputy Section Registrar*.

Decision of the Court

Article 6

The Court first examined the applicant's complaints relating to the fairness of the vetting proceeding in the part concerning the unfavourable assets assessment. The Court considered that the grievances raised by the applicant did not entail a violation of the fairness requirement under Article 6.

However, as to his separate complaints concerning specifically the fairness of the proceedings in relation to the background assessment (another legal basis used for the decision to dismiss him from office), as regards Mr Thanza's failure to disclose contact with individuals involved in organised crime, the Court held that he had not been afforded an adequate opportunity to oppose that finding and to make his case. It noted the vetting bodies' finding that Mr Thanza had not declared contact with criminal elements. However, the burden of proof in this regard had been switched to Mr Thanza, and this burden had been excessive, perhaps even impossible to meet, in the absence of access to any evidence provided by the vetting bodies of such contacts having taken place.

As regards the discontinued criminal investigation against Mr Thanza and another person and his failure to declare that investigation and his contact with that person, the Court held that the vetting bodies' assessment in that regard also raised fair-trial issues. The SAC had not given adequate reasoning in its ruling, which had been ultimately too formalistic. It noted the serious consequences that such disciplinary proceedings could have for judges in both their professional and private lives.

As a result, there had been a violation of Article 6 § 1 of the Convention.

Article 8

The Court reiterated that dismissal from office was a grave disciplinary sanction, which required a solid basis given the effects on an individual's private life.

It noted the vetting bodies' conclusions as regards the purchase of flats during a period in which Mr Thanza's family would not have had sufficient savings or other lawful resources to have made the purchases, as well as the expense needed to refurbish those properties. They also found that Mr Thanza had not justified a relatively large amount of declared savings in later years. The vetting bodies' approach in the assessment of facts and interpretation of domestic law had been neither

arbitrary nor manifestly unreasonable, nor disproportionate as to the outcome. There had been no shortcomings in the decision-making process as regards the assets assessment, which the vetting bodies considered would have been sufficient to justify Mr Thanza's dismissal.

As to an alleged ban on practicing as a lawyer, the Court rejected the complaint as inadmissible.

Overall, there had been no violation of his right to respect for private and family life.

Article 13

In view of its findings under Article 6, the Court did not feel it was necessary to examine the complaints under Article 13.

Article 46 (binding force and execution of judgments)

This was the first time the Court had found a violation under Article 6 of the Convention as regards the background assessment as a component of the vetting process in Albania. In the circumstances of the case, the Court did not consider it appropriate to indicate any individual measure sought by the applicant or to exceptionally indicate any further general measures.

Just satisfaction (Article 41)

The Court held, by 6 votes to 1, that finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained. It awarded 3,500 euros in respect of costs and expenses.

Separate opinions

Judges Serghides expressed a partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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