



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

THIRD SECTION

CASE OF DACI v. ALBANIA

(Application no. 5232/24)

JUDGMENT

Art 7 • *Nullum crimen sine lege* • Lack of foreseeability of the legal basis of a former judge's criminal conviction of falsification of a document • Applicant convicted for failing to disclose his dismissal from his previous position as a District Court judge in his application to become a member of the bodies set up to vet serving judges and prosecutors • Supreme Court created a new offence in the applicant's case and did not follow its own approach consistently after that • Relevant domestic provision extensively and unforeseeably construed to the applicant's detriment in a manner inconsistent with the essence of the offence

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 October 2026

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 Daci v. Albania,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Darian Pavli,

Diana Kovatcheva,

Úna Ní Raifeartaigh,

Mateja Đurović,

Vasilka Sancin, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 5232/24) 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 an Albanian national, Mr Luan Daci (“the applicant”), on 13 February 2024;

the decision to give notice to the Albanian Government (“the Government”) of the complaint under Article 7 of the Convention concerning the applicant’s conviction for falsifying a document and to declare inadmissible the remainder of the application;

the decision to grant the applicant leave to represent himself before the Court (Rule 36 § 2 *in fine* of the Rules of Court);

the parties’ observations;

Having deliberated in private on 8 September 2026,

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

INTRODUCTION

1. The case concerns the alleged lack of foreseeability of the legal basis for the criminal conviction of the applicant on charges of falsification of a document. He relied on Article 7 of the Convention.

THE FACTS

2. The applicant was born in 1957 and lives in Tirana.

3. The Government were represented by their Agent, Mr O. Moçka, General State Advocate.

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

I. BACKGROUND INFORMATION

5. The applicant was a judge at the Tirana District Court. On 24 December 1997, following disciplinary proceedings, he was dismissed by a decision of

the High Council of Justice on the grounds of breaches of the law and incompetence (“*shkelje të ligjës dhe paaftësi në detyrë*”).

6. In 2014 an *ad hoc* parliamentary committee for reform of the justice system was set up. It subsequently approved a report assessing the legal system in Albania (“the Assessment Report”), which led to the adoption of a strategy on reform of the justice system (“the Reform Strategy”). As a result of the proposed Reform Strategy, the Constitution was amended in 2016 and a number of essential statutes were enacted, one of which was the Transitional Re-evaluation of Judges and Prosecutors Act (Law no. 84/2016, hereinafter referred to as “the Vetting Act”). The vetting process to which all serving judges and prosecutors would be subject would be carried out by an Independent Qualification Commission (the “IQC”) at first instance and, on appeal, by a Special Appeal Chamber (“the SAC”) attached to the Constitutional Court (jointly referred to hereinafter as “the vetting bodies”).

7. Also, an International Monitoring Operation (“IMO”), led by the European Commission, was established, to support, monitor and supervise the re-evaluation process (for further role of IMO see *Xhoxhaj v. Albania*, no. 15227/19, § 105, 9 February 2021).

8. The applicant responded to an open call for the recruitment of five judges to the District Court of Tirana, but on 5 November 2016 the High Council of Justice decided to disqualify him from the competition on the grounds that he had been dismissed from the same position on 24 December 1997.

9. On 3 February 2017 the applicant applied to become a member of one of the vetting bodies by way of an application to the Albanian Ombudsperson (*Avokati i Popullit*), as was the prescribed procedure. In his application the applicant stated, *inter alia*, the following:

“... I have never been subject to a disciplinary measure of dismissal from office or any other disciplinary measure that is still in force, pursuant to the law applicable at the time of [my] application [for the position of SAC judge].”

In the attached curriculum vitae he did not mention that he had served as a judge at the Tirana District Court.

10. Following the establishment by the Ombudsperson of an *ad hoc* commission that would review all applications received for positions in the vetting bodies, on 13 February 2017 the said commission and the IMO adopted a protocol on the method by which the compliance of candidates with the statutory eligibility criteria would be evaluated (“*protokoll për metodën, sipas së cilës do të vlerësohej përmbushja e kriterëve statutore për përzgjedhshmërinë nga kandidatët*”). The protocol provided, among other things, that a self-declaration from the candidates would be sufficient to presume that a candidate had not been “subjected to a disciplinary measure of dismissal from office or any another disciplinary measure that had been still in force at the time of applying” for a position on one of the vetting bodies, as required by section 6(1)(dh) of the Vetting Act.

11. On 2 June 2017 a hearing was held before a parliamentary selection committee. In response to a question by an MP as to whether he had worked before the year 2000, the applicant answered that he had been a judge at the Tirana District Court between 1993 and 1997. When asked whether he had left of his own initiative or had been removed, the applicant answered that he had resigned.

12. The applicant's application was successful and he was appointed a judge at the SAC by Parliament on 17 June 2017.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

13. In 2020 the Special Prosecution Office against Corruption and Organised Crime ("the Special Prosecution Office"), upon a criminal complaint lodged by B.C. (see *Besnik Cani v. Albania*, no. 37474/20, § 15, 4 October 2022), opened a criminal investigation against the applicant on charges of falsifying a "form" (*formular*), a criminal offence under Article 190 of the Criminal Code, and an investigation was opened in respect of the applicant. In the course of the investigation the offence was reclassified as the criminal offence of falsifying a document under Article 186 of the Criminal Code.

14. On 1 December 2020 the Special Court of First Instance against Corruption and Organised Crime (hereinafter referred to as "the Special Court of First Instance") found the applicant guilty as charged and sentenced him to six months' imprisonment, suspended for one year. It held that in an affidavit (self-declaration) included in his application for a position on the vetting bodies, the applicant had failed to disclose the fact that his previous employment as a district court judge had been terminated as a result of a disciplinary measure against him (see paragraph 5 above). That failure by the applicant had amounted to "intellectual falsification" as he had knowingly presented false relevant information in his application for a senior position in the justice system. The first-instance court held that, even though there had been no particular form prescribed for the affidavit and applicants had been free to draft it how they chose, it nevertheless constituted an official document capable of producing legal effects and had been required by law for the selection procedure to be initiated. The first-instance court stated that the applicant's application had taken the form of a written letter which had served to attest and prove the information it contained, namely that the applicant met the criteria for applying for a position on the vetting bodies under section 6 of the Vetting Act. Therefore, the applicant's application amounted to a "document" within the meaning of Article 186 of the Criminal Code. The applicant had been obliged to include in it information on any disciplinary measures that had been taken against him, which he had failed to do. His failure to include the disciplinary measure imposed on him meant that the document contained false information which had brought about legal

consequences, including the appointment of the applicant to the SAC on the basis of that false information.

The court noted the applicant's argument that the measure against him had been expunged from his record. It referred in that connection to section 32(1) of the 2008 Judiciary Act, which stated that disciplinary violations by judges were to be divided into levels of seriousness, namely: (i) minor, (ii) serious and (iii) very serious. In the court's view, section 33(6) of the 2008 Judiciary Act should be construed in the sense that all disciplinary measures relating to *minor* and *serious* violations were to be removed from the record of the judge concerned upon the expiry of the relevant time-limits; however, it did not provide for the removal from the record of disciplinary measures relating to *very serious* violations, such as dismissal from office. The court also cited section 150(3) of the Status of Judges and Prosecutors Act, which governed the matter after the repeal of the 2008 Judiciary Act and which provided that the disciplinary measure of dismissal from office could not be removed from a judge's record. The court therefore concluded that the 1997 disciplinary measure against the applicant had not been removed from his record.

The first-instance court concluded that the applicant had intentionally presented false information in his application with the aim of hiding a fact which disqualified him as a candidate for judge at the vetting bodies.

15. The applicant lodged an appeal against that decision. He argued that the criminal offence of document falsification had not been committed in his case as his application had not been a "document" that could be falsified within the meaning of Article 186 of the Criminal Code. The application had merely been an expression of interest made in the context of an administrative procedure governed by the Code of Administrative Procedure and the relevant provisions of the Vetting Act. It was neither an official document nor a document containing altered or fabricated information. The applicant argued that the object of Article 186 of the Criminal Code could only be an official document, issued by State bodies, "enterprises or social institutions". The courts had wrongly treated that unilateral administrative document as if it were a formal self-declaration or an official record, thereby expanding the scope of criminal liability beyond what the law provided. Furthermore, had he made a false or inaccurate statement in a self-declaration form, the appropriate offence would have been the one under the first paragraph of Article 190 of the Criminal Code, which concerned false declarations in an official "form" (*formular*). He argued that the courts had effectively recharacterised his application as a self-declaration form, contrary to the law, and had thereby relied on an expansive interpretation by analogy which was prohibited in criminal matters. An important element of the applicant's defence concerned the disciplinary measure imposed on him in 1997, which the prosecution and courts had considered to be a fact that he had concealed. He argued that that measure had expired. As more than two decades had passed, the measure no longer had any legal effect and, legally, was treated

as if it had never existed. Any assessment of whether a disciplinary measure had remained in force was a matter of legal interpretation, not falsification, and could not give rise to criminal liability. There had been no direct intent to alter an official document, nor had any such alteration in fact occurred. He argued that “intellectual falsification”, as relied upon by the prosecution, was not a recognised offense in Albanian criminal law or jurisprudence, but derived instead from Italian doctrine, and contended that it could not be imported into domestic criminal law without a proper legal basis.

16. On 8 March 2021 the Special Court of Appeal upheld the first-instance judgment, endorsing its reasoning. It stressed that the purpose of the applicant’s application for a position on the vetting bodies had not only been to express his intention to apply for that position, but also to serve as proof that he fulfilled all of the conditions required by law to apply. One such condition was not to have been, at the time of application, subject to disciplinary sanctions or a prior removal from office. The failure of the applicant to declare in his application that he had been a judge of the Tirana District Court and that he had been dismissed due to a disciplinary sanction, as well as his false statement at the parliamentary hearing that he had resigned from that position, were assessed as intentional concealment of a fact and false presentation of facts in an official document.

The appeal court concluded that the applicant had acted with direct intent to conceal a piece of information required by law to be disclosed in order to avoid being disqualified from the competition at issue. He had thus committed the criminal offence of falsifying a document under Article 186 of the Criminal Code.

The appeal court also held as follows:

“The content of the application/request [submitted by the applicant for a position on the SAC] in this case is important and carries consequences, as the non-fulfilment of the formal criteria provided [in section 6(1) of the Vetting Act] leads to the disqualification of the candidate. That rule demonstrates the importance that the lawmaker attached to those criteria, which relate to the personal qualities that an candidate must possess in order to be appointed to the institutions [overseeing the] transitional re-evaluation of judges and prosecutors. These qualities/criteria, [which are] required by law, are important when cited before a public institution – all the more so in the case at hand, where the whole process of the transitional re-evaluation of judges and prosecutors is directly related to public trust in the justice [system] ([the protection of] which is the purpose of the creation of these institutions).

...

... the fact that the bodies empowered by law for the verification of candidates to the [vetting bodies] have not performed the relevant verifications in accordance with the legal requirements ..., does not exclude the liability of the defendant, who, intentionally and in full awareness, has presented in his application a false circumstance, [thereby] concealing a disqualifying condition related to the existence of a disciplinary measure of removal/dismissal from office imposed on him.”

17. On 20 April 2021 the applicant lodged an appeal against that decision with the Supreme Court, reiterating the arguments he had made in his appeal against the first-instance judgment (see paragraph 15 above).

18. On 26 October 2021 the Supreme Court dismissed the applicant's appeal and upheld the lower courts' judgments. It held that for the criminal offence under Article 186 of the Criminal Code to have been committed there had to be a document which was falsified and the falsification had to be intentional and committed by a person subject to criminal liability.

As to the applicant's application for a position on the vetting bodies, the Supreme Court held that it was a formal act required by law, namely section 7 of Law no. 84/2016 (the Vetting Act), necessary for inclusion in the selection procedure, and that the accuracy of the information provided therein was also a legal requirement. In the Supreme Court's view that sufficed for it to be seen as a "document" within the meaning of Article 186 of the Criminal Code. In essence, it was a letter meant to testify to something in writing, namely that the candidate concerned satisfied all requirements under section 6 of the Vetting Act. From the moment the applicant had chosen to apply for a position on the vetting bodies, he had had an obligation to submit an application with the Ombudsperson, and that application was capable of producing legal effects. However, the applicant's application had contained false information to the effect that he had not been subjected to the disciplinary measure of removal from office, or to any other disciplinary measure.

The Supreme Court stressed that the Criminal Code did not contain a definition of the word "document", so it was to be interpreted according to the definition in the *Dictionary of the Albanian Language*. In that dictionary the word "falsify" meant to represent as truth something that was a lie. Falsification was not only a falsified signature or a forged document, but also presenting or describing untrue facts as truthful. In the courts' case-law, that form of falsification was known as "intellectual falsification".

The Supreme Court relied on its previous judgment no. 00-2017-581 (111) of 12 July 2017, in which it had held that:

"intellectual falsification is committed by creating an act or document, in its entirety, through which a physical or legal person, whether public or private, expresses their will or assumes rights and obligations which, in reality, were not expressed. The criminal offense of falsifying documents ... may be committed in two ways, either directly in the document, by inserting false additions or other alterations, or with any other intervention to an existing document ... or in the other way that consists in falsifying the content of a document, without affecting its form ... That is the case of an 'intellectual' falsification that affects the descriptive and declaratory part of the document."

The Supreme Court rejected the applicant's argument that that form of falsification did not exist in Albanian law and that he had been punished without law.

As to the element of the criminal offence under Article 186 of the Criminal Code that required that the action have consequences, the Supreme Court held that, when it came to a private document, that element would be satisfied when the author of the document concerned had obtained unfair benefits or caused harm to third parties. Therefore, for the criminal offence in question to have been committed, it was not enough that a document had been falsified: there also had to have been consequences flowing from that act.

As to the applicant, the Supreme Court found that he had benefited from providing untrue information in his application, namely by being appointed a SAC judge. Not only had he submitted false information in his application, but he had also misled the parliamentary selection committee for the verification of candidates. At a hearing before that committee, he had confirmed that he had been a district court judge, but had falsely stated that he had resigned from that position, whereas he had actually been dismissed because of a disciplinary sanction against him. Given those circumstances, the Supreme Court concluded that, at the time of his application, the applicant had been aware of the disciplinary measure “dismissal from the post of judge” imposed on him by the former High Council of Justice.

The Supreme Court stated that a previous dismissal from office disqualified a candidate from holding certain public functions and confirmed that disciplinary measures for very serious violations were not removed from a judge’s record with the passage of time. The court further found that:

“69. ... [the applicant] deliberately provided false information in his application for the position of judge with the [SAC], for which position he [was deemed] qualified and [to which he was later] appointed precisely because of the untrue information that he had provided in the application form. If [the applicant] had disclosed in his application his dismissal from his post in 1997 he would have risked being disqualified under law [from being considered] for a position [on the vetting bodies].

70. The failure of the relevant bodies under [the Vetting Act] ... to verify the conditions that must be met by candidates for positions [on] the [vetting bodies] does not absolve the applicant of responsibility for declaring false information in his application.”

19. One of the Supreme Court judges dissented from the majority decision, considering that the application for a position on the vetting bodies could not be treated as a “document” for the purposes of the criminal offence at issue. He argued that not all private submissions to a State body could be considered “documents” within the meaning of Article 186 of the Criminal Code and that only those private documents that were meant to certify a particular fact of legal consequence (such as a school diploma), or that were provided under oath or under threat of a penalty for perjury could be considered as such.

He further held that, in any event, the applicant’s defence that he had believed that the disciplinary measure had been removed from his record was

arguable, and that no criminal intent could therefore be inferred from the circumstances of the case.

The dissenting judge considered that criminal courts were not competent to make a final determination that the applicant's dismissal in 1997 disqualified him from holding the position of SAC judge. Moreover, even assuming that the 1997 dismissal had disqualified the applicant, his appointment as an SAC judge had only been possible because of the failure of the Ombudsperson and Parliament to verify whether he fulfilled the relevant criteria, rather than being solely attributable to the application that the applicant had lodged with the Ombudsperson.

He also referred in that respect to Italian jurisprudence on "*falso inutile*" (useless falsity) in private documents, which was to be distinguished from criminal falsification in official documents.

20. On 17 January 2022 the applicant lodged a constitutional complaint.

21. On 26 September 2022 the Constitutional Court remitted the case to the Supreme Court because one of the judges of the Supreme Court panel that had heard the case had also participated in deciding a request for a security measure lodged by the prosecution at an earlier stage in the proceedings.

22. On 21 March 2023 the Supreme Court again dismissed the applicant's appeal, finding that there were no grounds to reverse its previous judgment. It added that:

"... falsification [of a private document] will be considered committed when the author of the document has obtained unfair benefits or caused harm to third parties by way of the falsification; hence, not merely by the evidence of false content without consequences, but by requiring in this way the entailing of a consequence, which in this case means that a private document is identified as obtaining an illegal benefit accruing to the falsifier of the document, or as causing harm to third parties."

The Supreme Court relied on its judgment of 12 July 2017 (see paragraph 40 below).

23. On 19 June 2023 the applicant lodged a fresh constitutional complaint. He complained, *inter alia*, that his right not to be punished without law had been violated.

24. On 21 September 2023 the Constitutional Court, by five votes to four, dismissed the applicant's constitutional complaint. The reasoned judgment was served on the applicant on 20 October 2023.

The majority endorsed the Supreme Court's interpretation of Article 186 of the Criminal Code, finding that it was not unreasonable or arbitrary.

Regarding the applicant's claim that the Supreme Court had created a new criminal norm and acted as the legislator in its determination of the relevant criminal actions and omissions, the Constitutional Court held that the criminal offence of falsifying documents was provided for in Albanian criminal law and that the concepts of "material falsification (*falsifikim material*)" and "intellectual falsification (*falsifikim ideologjik ose intelektual*)" were not new and did not constitute an extended interpretation

of the (criminal) provision. In fact, the Supreme Court had relied on its previous case-law concerning the interpretation of the concept of “intellectual falsification”. The Constitutional Court observed that the interpretation of concepts of criminal law and of the Criminal Code was a task for the Supreme Court and that that court had given adequate reasons for its interpretation of Article 186 of the Criminal Code in the applicant’s case.

25. The four dissenting judges argued that the Supreme Court appeared to have adopted a novel and expansive interpretation of the notions of “document” and “falsification” as regards the criminal offence at issue, without relying on an established line of case-law. As such, it had failed to properly engage with the applicant’s Article 7 claims.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. The Criminal Code

26. The relevant part of the Criminal Code reads as follows:

Article 186

Falsification of documents

“Falsifying a document or using a falsified document is punishable by imprisonment for a period of up to three years.

...

When the falsification is done by a person who is responsible for issuing the document concerned, it is punishable by imprisonment for a period of between one and seven years.”

Article 187

Falsifying school documents

“Falsifying school documents or using falsified school documents is punishable by a fine or up to three years’ imprisonment.

When an individual authorised to issue the document carries out the falsification, such an act is punishable by a fine or by up to five years’ imprisonment.”

Article 188

Falsifying health-related documents

“Falsifying health-related documents or using falsified health-related documents is punishable by a fine or up to three years’ imprisonment.

When an individual authorised to issue the document carries out the falsification, such an act is punishable by a fine or by up to five years’ imprisonment.”

Article 189
Falsifying identity cards or visas

“Falsifying identity cards, passports or visas or using falsified identity cards, passports or visas is punishable by a fine or by up to five years’ imprisonment.

When an individual authorised to issue identity cards or passports carries out the falsification, such an act is punishable by three to seven years’ imprisonment.”

Article 190
Falsifying seals, labels or forms

“Falsifying seals, labels [*stampave*] or forms [*formularëve*], or using falsified seals, labels or forms, or providing false information on forms submitted to State bodies, is punishable by a fine or by up to five years of imprisonment.

When the falsification is carried out by an individual authorised to prepare them, such an act is punishable by three to seven years of imprisonment.”

Article 191
Falsifying civil records

“Falsifying civil records or using falsified civil records is punishable by a fine or by up to three years of imprisonment.

When an individual authorised to issue such a record commits the falsification, it is punishable by up to five years’ imprisonment.”

Article 306
Perjury

“Perjury before the court constitutes a criminal offence [that] shall be punishable by a fine or imprisonment for a term of up to two years.

Where false testimony is given for the purpose of obtaining a benefit or any other advantage that has been offered, promised or provided, the offence shall be punishable by a fine or by imprisonment for a term of up to three years.

The same offence, where committed in connection with the criminal offences provided for in Articles 234/a, 234/b, 284/a, 333 and 333/a of this Code, shall be punishable by imprisonment for a term of between two and six years.”

B. The Code of Criminal Procedure

27. The relevant provisions of the Code of Criminal Procedure read as follows:

Article 191
The acquiring of documents

“The acquisition of documents concerning facts, persons or objects shall be permitted through photographing, filming, audio recording or any other means.

1. When the original document has been damaged, lost or disappeared, a copy may be acquired.

2. Documents constituting material evidence shall be acquired irrespective of the person who created or holds them.”

Article 450

Grounds for revision [*Rastet e rishikimit*]

“An application for revision [of a final judgment] may be made:

(...)

- (e) when grounds for revision of a final judgment stem from a judgment of the European Court of Human Rights which makes revision indispensable....”

C. The Transitional Re-evaluation of Judges and Prosecutors Act (Law no. 84/2016, the “Vetting Act”)

28. Section 6 of the Vetting Act, in so far as relevant, reads as follows:

Section 6 – Conditions for the appointment of members of the [vetting bodies]

“1. An Albanian citizen may be appointed as a member of the [Independent Qualification] Commission or [Special] Appeal Chamber if he or she fulfils the following conditions:

...

- c) [he or she] has received positive evaluations of his or her professional skills, ethics and moral integrity, in the event that he or she has been subject to previous evaluations;

...

dh) has no disciplinary measure of dismissal from office [previously imposed on] him or her or any other disciplinary measure that is still in force, pursuant to the legislation at the time of his or her applying [for a position on the vetting bodies].”

29. Sections 7 to 12 regulate the procedure for applications and for the preselection, interviewing and selection of candidates. The members of the vetting bodies are to be selected by a vote of Parliament.

The relevant part of section 7 reads as follows:

“4. The candidate refers in his/her application to the vacancy for which he or she is interested to apply. If the candidate indicates no preference, the application is considered [as made] for all vacancies. The candidate shall attach to the application two copies of the following documents:

- a) Curriculum vitae including contact details, official email and postal address;
- b) A notarised copy of the [university] diploma or equivalent copy issued by the respective institutions;

- c) Notarised or equivalent copies of the documents issued by the respective institutions, which attest [that the] requirements under section 6 of this Law [are met];

...”

D. The 2008 Judiciary Act (Law no. 9877/2008 of 18 February 2008 on the organisation and functioning of the judiciary, as amended) – repealed on 22 November 2016

30. The relevant sections of the 2008 Judiciary Act read as follows:

Section 32 - Disciplinary violations

“1. Disciplinary violations by judges are divided into the following categories:

- a) very serious;
- b) serious;
- c) minor.
- ...”

Section 33 - Disciplinary measures

“1. Disciplinary measures shall be proportional *vis-à-vis* the violation committed.

2. The disciplinary measures that may be imposed are:

- a) a reprimand;
- b) a reprimand with a warning;
- c) temporary demotion to a lower-level court for a period of one to two years;
- ç) a transfer for one to two years to a court of the same level outside the judicial district to which the judge [in question] was appointed;
- d) dismissal from office.

3. For very serious violations ... the disciplinary measure [of dismissal from office] provided in point “d” of subsection 2 of this section shall be imposed.

4. For serious violations ..., the disciplinary measures provided in points “c” or “ç” of subsection 2 of this section shall be imposed.

5. For minor violations ..., the disciplinary measures provided in points “a” or “b” of subsection 2 of this section shall be imposed.

6. For the purposes of disciplinary proceedings, serious disciplinary measures are removed [from the record of the person concerned] within three years of the date on which they were imposed if no other disciplinary measure has been imposed, while minor disciplinary measures are removed within two years from the date on which they were imposed if no other disciplinary measure has been imposed.”

E. Law on Civil Servants (Law no. 152/13 – amended by Law no. 178/2014 of 18 December 2014, Official Gazette No. 211)

31. Section 61 of the Law on Civil Servants provides that any disciplinary sanction imposed on civil servants relating to their employment expires seven years after the civil servant concerned was notified of the sanction.

F. Law on the Status of Judges and Prosecutors (Law no. 96/2016)

32. Section 150(3) of the Law on the Status of Judges and Prosecutors reads as follows:

“The disciplinary measure of dismissal shall not be erased and shall not be removed from [an individual’s] record.”

G. The Administrative Procedure Act (Law no. 44/2015)

33. The relevant provision of the Administrative Procedure Act provides as follows:

Section 58

Form and content of a request

“1. Except in cases when the law requests a specific form, any request, by which parties address a public body in an administrative procedure, may be:

- a) in writing;
- b) declared verbally in front of the public body and registered by the latter;
- c) in any other appropriate form.

2. The request should be sufficiently clear in defining the applicant and the purpose [of the application], unless the law has provided for a specific content.

...”

H. The Decriminalisation Act

34. Under sections 2 to 5 of the Decriminalisation Act (Law no. 138/2015 on ensuring the integrity of persons exercising, elected or appointed to public functions”), as amended by Law no. 38/2016, persons seeking appointment to certain public offices must complete and sign a self-declaration form declaring the absence of grounds preventing their appointment, such as, *inter alia*, the absence of a final criminal conviction resulting in a sentence of imprisonment for a number of offences listed in the Law. It is expressly provided that a false declaration is punishable under Article 190 of the Criminal Code.

II. PRACTICE OF DOMESTIC COURTS

A. Case-law submitted by the applicant

1. Case of A.F.

35. On 2 July 2020 H.M. lodged a criminal complaint with the Special Prosecution Office against A.F., a member of the IQC. H.M. alleged that A.F. had omitted information concerning her prior dismissal from office as a judge

in 1996 when applying for a position on the vetting bodies, and that she had therefore committed the criminal offence of falsification of documents.

36. On 11 February 2021, after the investigation was concluded, the Special Court of First Instance granted the prosecutor's request to discontinue the proceedings. It reasoned that the offence of falsification of documents could only be committed in one of two ways: either by interfering directly with an existing document by making changes or by creating a new document. In A.F.'s case the alleged act amounted only to 'intellectual forgery'. A.F. had included in her application her employment booklet, which contained information on her dismissal from office. Furthermore, she had not declared any "untrue facts" before the selection committee. She had informed them that she had served as a judge previously without mentioning the reason for her departure, and the members of the committee had not asked her for it. Furthermore, A.F., unlike the other candidates, had not submitted any written statement certifying or documenting that there was no disciplinary measure of dismissal in force against her.

37. On 6 May 2021 the Special Court of Appeal upheld the decision of the Special Court of First Instance. It endorsed the prosecution's arguments, finding further that under the Criminal Code and the Code of Civil Procedure, the term "document" referred to "written materials created and intended to prove a legally relevant fact". It also interpreted falsification as "the intentional act of erasing, destroying, damaging, adding to or altering a document in such a manner as to change or distort it by presenting false information or circumstances, or the drafting of an entirely new document claiming to be original but containing false information".

It further held that the legal significance of the application form and declaration before Parliament or the vetting bodies, "lay solely in the expression of the candidate's intention to apply for a position" within the vetting bodies. Any other written statement contained in the application could not produce legal consequences and, therefore, the falsification thereof could not entail criminal liability.

38. In its judgment no. 00-2025-676 of 24 April 2025, the Supreme Court dismissed a cassation appeal lodged by H.M. It noted that H.M.'s arguments had already been raised during the investigation and before the special courts, which had provided sufficient and appropriate reasons for discontinuing the criminal proceedings against A.F.

2. The Supreme Court's judgment no. 00-2023-1529 (257) of 26 September 2023 (case of E.Ç.)

39. E.Ç., an IQC member, was accused of the criminal offence of falsification of documents. It was alleged that she had been a party to fictitious contracts containing false information and signed before a public notary. The Supreme Court, in so far as relevant, held as follows:

“188. ... it is concluded that the submission of such a document in 2017 to the High Inspectorate of the Declaration and Control of Assets and Conflicts of Interest (HIDAAC) by the judge does not constitute the committing of the criminal offence of falsification of documents under paragraph 1 of Article 186 of the Criminal Code. A fictitious contract (signed when E.Ç. was not subject to declaration duties) is not considered a falsified document. Therefore, even the use of this contract does not constitute the objective element of the criminal offence of falsification of documents.

189. In these circumstances, for the above reasons, it does not result that the criminal offence of falsification of documents has been committed by E.Ç., since drafting a simulated contract and subsequently using it does not constitute a criminal offence in itself and [such contracts] therefore cannot be seen as falsified documents. They can constitute another criminal offence, if all the elements [of that offence] are met, which the court has not found in the case at issue.”

B. Case-law submitted by the Government

1. Judgment of the Supreme Court no. 00-2017-581 (111) of 12 July 2017

40. In this case, the alleged criminal offence concerned the use by the accused of an entirely falsified public document used to obtain ownership of a plot of land. The falsified document was an official document that had supposedly been issued by the Commission on Property Restitution and Compensation. The Supreme Court quashed the lower courts’ judgment acquitting the accused and remitted the case for fresh assessment. In so far as relevant, the Supreme Court held as follows:

“3. The criminal offence of document falsification under Article 186 of the Criminal Code is to be understood as the presentation in a document of false circumstances or the drafting of a falsified document, as well as the use of falsified documents.

...

5. The criminal offense of document falsification ... can be committed in two ways: either by intervening directly in the document, by making illegal additions or alterations, or by any other material change to a previously existing document. In that case, we will be faced with ‘material’ falsification; whereas falsifying the content of the document, without affecting its form, by changing the concept and content of the document, is ‘intellectual’ falsification that violates the descriptive-declarative part of the document.”

41. In paragraph 7 of the judgment the Supreme Court noted in passing that the objective element of the criminal offence of falsification of documents could also be committed by private persons.

2. Judgment of the Supreme Court no. 00-2017-659 (116) of 19 July 2017

42. In this judgment, the alleged criminal offence concerned the falsification of a document used to obtain ownership of a plot of land. The allegedly falsified document was an official document issued by the relevant authorities, namely a renovation permit that had been issued in 1989 by the urban planning office of a local government authority.

43. In paragraphs 8 and 9 of the judgment the Supreme Court held that the criminal offence of document falsification could be committed in two ways: either by falsifying a document or by using a document that had already been falsified, whether by the same person who had falsified it or by someone else who had an interest in its use. In the first case, establishing who had falsified the document was essential, whereas in the second case what mattered was identifying the person who had used the falsified document.

3. Judgment of the Supreme Court no. 00-2024-1833 (277) of 7 November 2024

44. This judgment concerned the criminal offences of fraud in public procurement and falsification of documents. The defendants were accused of falsifying documents (inspection and completion certificates confirming that the building had been completed) to ensure that private companies could benefit from public procurement.

45. In paragraphs 19-23 of that judgment the Supreme Court reiterated its previous position as regards the interpretation of Article 186 of the Criminal Code. It held that that criminal offence was classified as a formal offence, as it was considered committed by the act of falsifying the document itself, irrespective of whether that act actually brought about any harmful consequence. It also stated that the offence covered both public and private documents.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

46. The applicant complained that his conduct had not amounted to the criminal offence at issue, and that such a characterisation of his actions had not been foreseeable to him, contrary to the guarantees under Article 7 of the Convention, which reads as follows:

“1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.”

A. Admissibility

47. The Government argued that the applicant’s complaint was manifestly ill-founded.

48. The Court notes that the arguments advanced by the Government concern the merits of the case. It further notes that this 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

1. The parties' arguments

(a) The applicant

49. The applicant argued that his application for a position on the vetting bodies could not be seen as a “document” within the meaning of the Criminal Code (Articles 186-189 and 191) and the relevant domestic practice as it stood at the time of his application, namely on 3 February 2017. According to such practice, a document had the quality of proving or certifying a fact, and as such it caused a pertinent legal consequence. His application for a position on the vetting bodies had merely been a private letter expressing an interest, accompanying his curriculum vitae, and had not served to prove or certify any fact. His application and curriculum vitae had been accompanied by official documents, and only those documents had served to prove facts. This was also consistent with the relevant provisions of the Vetting Act, including its section 7(4)(c).

50. He submitted that the Criminal Code did not define what a “document” was. He argued that the legal literature in Albania had historically supported the view that a “document” for the purposes of Article 186 of the Criminal Code was an official document issued by a State institution, a business or a social organisation, but could not be a document drafted and signed by a private person. Even assuming that a private document could fall under the scope of Article 186 under certain circumstances, the definition adopted by the courts in his case, including the Supreme Court, was much broader and went much further than any pre-existing practice. The Supreme Court had cited a single precedent in support of its position, which (precedent) not only post-dated his application for the vetting bodies but was also significantly narrower in its scope (see paragraph 40 above).

51. The applicant stressed that applications for positions on the vetting bodies had not been made *via* a legally prescribed form or an affidavit, and as such there had been no warning as to the legal consequences of the contents of the applications. His application had merely been an expression of interest by him in the available roles and, as such, there could be no dispute as to its content. Albanian criminal law defined the situations in which the criminal offence of perjury could occur, namely when a statement was given under oath before a court, a prosecutor, the judicial police, a public notary or investigative committees. In his case, no such situation had arisen and there

had been no legal warning that giving a false statement would entail any consequences, let alone criminal prosecution.

52. As to the legal consequences attached to his application to become a member of the vetting bodies, the applicant contended that they had been limited to the initiation of the administrative process relevant to the appointment at issue. Decisions relating to the appointment of SAC judges had been exclusively in the hands of Parliament.

53. In the applicant's view, the criminal offence of falsification of documents could not be committed by omission, as had been held by domestic courts in his case, but only by interfering with official documents in an active manner.

54. The applicant maintained that only an official could commit the criminal offence of falsifying documents, and that at the time he had submitted his application to become a member of the vetting bodies he had not been an official, but a lawyer in private practice.

55. The applicant further maintained that he had not been given any form containing a request that he submit information on any disciplinary sanction applied against him. He submitted that, even if there had been such a requirement, he would have not been obliged to report the disciplinary sanction imposed on him in 1997 because, under the Law on Civil Servants (see paragraph 31 above), all disciplinary sanctions imposed in relation to the employment of civil servants expired after seven years. The applicant emphasised that before the selection committee he had stated that no disciplinary sanction had been in force against him at the time of his application, as required by the Vetting Act (see paragraph 28 above). That statement could not be seen as false, regardless of whether criminal liability would have been entailed by a false declaration.

56. Moreover, the applicant argued that the national courts had convicted him of the offence of "intellectual falsification", which did not exist in domestic criminal law. In his view Article 186 of the Criminal Code, relied on by domestic courts, concerned material falsification of documents rather than "intellectual falsification". The domestic courts had created the criminal offence of "intellectual falsification" in his case, thus violating the principle that only the law could define criminal offences. The domestic courts had thus assumed legislative powers, which was contrary to their constitutional role.

57. As to the case-law of the domestic courts, the applicant stressed that case-law could not create criminal offences and that criminal offences could only be defined by statutory law. He further submitted that there had been no judgments of the domestic courts convicting anyone of "intellectual falsification" prior to his case.

(b) The Government

58. The Government argued that Article 186 of the Criminal Code, which served as the basis for the applicant’s conviction, had been in force since 1995 and was accessible. Its wording was clear and its consequences foreseeable, and its interpretation by the national courts had been consistent and in accordance with the standards developed in the Court’s case-law. The criminal offence under Article 186 of the Criminal Code covered both public and private documents. The constituent elements of that offence were the existence of a document containing false information and the use thereof in order to obtain a benefit. In the applicant’s case all those elements had been present.

59. The Government conceded that the word “document” was not defined by criminal law and that domestic courts had assessed its definition relying on the *Dictionary of the Albanian Language*, which defined a document as a written record [indicating] what had been said or decided in a meeting or in a court, or “a note kept under certain rules, something written or drawn which has historical value”. Documents could be official or private. Under Article 191 of the Code of Criminal Procedure, which regulated the taking of evidence in criminal proceedings, documentary evidence could be of an official or private nature. Under Articles 258-63 of the Code of Civil Procedure, any document could be invalidated on the ground that it had been falsified, and private documents could be invalidated because of their false content even when it had been proved that they were original documents.

60. In the Government’s view the criminal offence under Article 186 of the Criminal Code encompassed both official and private documents that were used in administrative procedures, including those used in the selection procedure for a candidate of the vetting bodies. The domestic courts had found that the applicant’s application for a position on the vetting bodies was a formal document necessary to the initiation of the procedure for the selection of candidates for that position.

61. As to the applicant’s argument that there had been no prescribed form for his application for a position on the vetting bodies, the Government relied on section 58 of the Administrative Procedure Act, which provided that a request to administrative bodies could be made in written form or orally, and that such a request was not necessarily required to take a specific form, unless otherwise provided by law. The Government also cited the protocol on the methodology by which the compliance of candidates for positions on the vetting bodies with the statutory eligibility criteria would be evaluated (see paragraph 10 above). Under that protocol, the self-declaration of a candidate as to whether he or she had been previously dismissed was sufficient. Therefore, the applicant must have been aware that he had to submit accurate information in that respect.

62. The Government also argued that, for a document to be considered to have been falsified, it was not necessary for it to have been made under oath,

or for any specific warning to have been given to the effect that it had to contain accurate and truthful information.

63. The Government contended that the document written and submitted by the applicant had contained false information and had been intended to produce legal consequences. They submitted that the Supreme Court, in its judgment no. 00-2017-581 (111) of 12 July 2017, had held that falsification could be committed by altering an original document, by forging a document in its entirety or by introducing false content into a formally legitimate document. In the Government's view, the interpretation of Article 186 of the Criminal Code by the domestic courts in the applicant's case had been consistent with their consolidated practice and did not contain any element of arbitrariness. The domestic courts had found that the document submitted by the applicant had contained false information intended to be used for verifying whether he met the criteria to be appointed a member of the vetting bodies. Furthermore, at a hearing held before the selection committee the applicant had falsely stated that he had resigned from his position of a judge at the Tirana District Court.

64. As to the issue of foreseeability, the Government submitted that domestic courts had not created a new criminal offence, expanded the content of Article 186 of the Criminal Code "beyond its natural framework" or applied it in an unexpected or unusual manner. The Supreme Court had developed clear and consistent case-law to the effect that the criminal offence of falsification of documents encompassed both "material and intellectual falsification". It had relied on its previous case-law as regards the definition of "intellectual falsification", namely its judgment 00-2017-581 (111) of 12 July 2017 (see paragraph 40 above).

65. The Government stressed that the applicant was a lawyer by profession and that, under the Court's case-law, the foreseeability of a norm was assessed taking into account the level of expertise of the person concerned. The applicant, who had a law degree and had previously been a judge, must have been aware of the accuracy requirement with respect to the document he had submitted. Therefore, the interpretation of Article 186 of the Criminal Code by the domestic courts in his case must have been foreseeable to him.

66. The Government further submitted that the Law on the Status of Judges and Prosecutors (Law 96/2016, see paragraph 32 above) provided that the disciplinary measure of dismissal did not expire, nor was it to be removed from an individual's record. That law had been in effect when the applicant had submitted his application for a position on the vetting bodies and must have been known to him.

67. The Government also pointed out that the domestic courts had established that the applicant had acted "with knowledge and will" with a clear intention of presenting a document which "did not reflect the actual facts". The appeal court and the Supreme Court had both considered that the

applicant's intent had been shown by "the manner in which the document was drafted, the circumstances in which it was used" and the consequences it had aimed to bring about, "namely the applicant's appointment to one of the highest judicial positions".

2. The Court's assessment

(a) General principles

68. Article 7 of the Convention is not confined to prohibiting the retroactive application of criminal law to the disadvantage of an accused. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (*nullum crimen, nulla poena sine lege*) and the principle that criminal law must not be extensively construed to the detriment of an accused, for instance by analogy (for recapitulation of the relevant general principles see *Del Río Prada v. Spain* ([GC], no. 42750/09, §§ 77-80 and 91-93, ECHR 2013; and, more recently, *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, §§ 237-42, 26 September 2023; and *Yasak v. Türkiye* [GC], no. 17389/20, §§ 190-92 and 194-95, 5 May 2026).

69. The Court has acknowledged in its case-law that, however clearly drafted a legal provision may be, in any system of law there is an inevitable element of judicial interpretation. There will always be a need for elucidation of doubtful points and for adapting to changing circumstances. Again, whilst certainty is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice. The role of adjudication vested in the courts is precisely to dissipate such interpretational doubts (see, among many authorities, *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 568, 20 September 2011). In this context, it must be reiterated that the progressive development of the criminal law through judicial law-making is a well-entrenched and necessary part of legal tradition. Article 7 of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen (see *S.W. v. the United Kingdom*, 22 November 1995, § 36, Series A no. 335-B; *Streletz, Kessler and Krenz v. Germany* [GC], nos. 34044/96 and 2 others, § 50, ECHR 2001-II; and *Vasiliauskas v. Lithuania* [GC], no. 35343/05, § 155, ECHR 2015). The lack of an accessible and reasonably foreseeable judicial interpretation can lead to a finding of a violation of the accused's Article 7 rights (see, in connection with the constituent elements of an offence, *Pessino v. France*, no. 40403/02, §§ 35-36, 10 October 2006, and *Dragotoniū and Militaru-Pidhorni v. Romania*, nos. 77193/01 and 77196/01, §§ 43-44, 24 May 2007). Were that not the case, the object and the purpose

of this provision – namely that no one should be subjected to arbitrary prosecution, conviction or punishment – would be defeated (see *Del Río Prada*, § 93 and *Yüksel Yalçınkaya*, § 239, both cited above, and *Sacharuk v. Lithuania*, no. 39300/18, § 144, 23 April 2024).

70. When examining whether the domestic courts' broad interpretation of the text of the law was reasonably foreseeable for the purposes of Article 7 § 1 of the Convention, the Court has regard to whether the interpretation in question was the resultant development of a perceptible line of case-law or its application in broader circumstances was nevertheless consistent with the essence of the offence (see *Parmak and Bakır v. Turkey*, nos. 22429/07 and 25195/07, § 65, 3 December 2019). The domestic courts must exercise special diligence to clarify the elements of an offence in terms that make it foreseeable and compatible with its essence (*ibid.*, § 77). In this context, the Court reiterates that even when a point is ruled upon for the first time in an applicant's case, a violation of Article 7 of the Convention will not arise if the meaning given is both foreseeable and consistent with the essence of the offence (see *Jorgic v. Germany*, no. 74613/01, § 114, ECHR 2007 III; *Huhtamäki v. Finland*, no. 54468/09, § 51, 6 March 2012; *Georgouleas and Nestoras v. Greece*, nos. 44612/13 and 45831/13, § 57, 28 May 2020; and *Sacharuk*, cited above, § 145).

71. The Court has found that the foreseeability requirement was not met in cases of an extensive interpretation of criminal law to the accused's disadvantage (*in malam partem*), both where that interpretation stems from an unforeseeable case-law reversal (*Dragotoniū and Militaru-Pidhorni*, cited above, §§ 39-48) or from an interpretation by analogy which is incompatible with the essence of the offence (for example, the conviction for genocide in *Vasiliauskas*, cited above, §§ 179-186), and where there has been an extensive and unforeseeable interpretation of an offence to the accused's disadvantage that is incompatible with the very essence of that offence (*Yüksel Yalçınkaya*, cited above no. 15669/20, § 271; *Navalnyy v. Russia*, no. 101/15, § 68, 17 October 2017; *Parmak and Bakır*, cited above, § 76; and *Tristan v. the Republic of Moldova*, no. 13451/15, §§ 59-67, 4 July 2023). It may also find against a State on the grounds of a conviction for an offence resulting from case-law development consolidated after the commission of that offence (for example, the offence of aiding and abetting a mafia-type organisation from the outside in *Contrada v. Italy (no. 3)*, no. 66655/13, §§ 64-76, 14 April 2015), or the case of a conviction based on an ambiguous legal provision which had offered divergent interpretations (*Žaja v. Croatia*, no. 37462/09, §§ 99-106, 4 October 2016). In that connection, an inconsistent case-law lacks the required precision to avoid all risk of arbitrariness and enable individuals to foresee the consequences of their actions (*ibid.*, § 103).

72. The Court would also point out that its task is not to review the relevant domestic law and practice *in abstracto* (see, for example, *Allen v. the United Kingdom*, no. 18837/06, § 40, 30 March 2010). Its task is rather

to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention or its Protocols (see, among other authorities, *Mežnarić v. Croatia*, no. 71615/01, § 28, 15 July 2005, and *Fruni v. Slovakia*, no. 8014/07, § 133, 21 June 2011). In this context, it is not the Court's task to substitute itself for the domestic courts as regards the assessment of the facts and their legal classification, provided that these are based on a reasonable assessment of the evidence (see, *mutatis mutandis*, *Florin Ionescu v. Romania*, no. 24916/05, § 59, 24 May 2011). As to the question of whether the measure was in accordance with the law, the Court's case-law has established that a measure must have some basis in domestic law, the term "law" being understood in its "substantive" rather than its "formal" sense. In a sphere covered by statutory law, the "law" is the enactment in force as the competent courts have interpreted it. Domestic law must further be compatible with the rule of law and accessible to the person concerned, and the person affected must be able to foresee the consequences of the domestic law for him or her (see, *inter alia*, in the context of Article 8 of the Convention, *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, § 332, 25 May 2021; see also *Société Colas Est and Others v. France*, no. 37971/97, § 43, ECHR 2002-III; *Wolland v. Norway*, no. 39731/12, § 62, 17 May 2018; and *Särgava v. Estonia*, no. 698/19, § 86, 16 November 2021). It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. The Court's role is thus confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I; *Korbely v. Hungary* [GC], no. 9174/02, §§ 72-73, ECHR 2008; and *Kononov v. Latvia* [GC], no. 36376/04, § 197, ECHR 2010). According to the Court's general approach, it does not question the interpretation and application of national law by national courts unless there has been a flagrant non-observance or arbitrariness in the application of that law (see, *inter alia*, *Lavents v. Latvia*, no. 58442/00, § 114, 28 November 2002; and *Huhtamäki*, cited above, § 51); given the subsidiary nature of the Convention system, it is not its function to deal with errors of fact or law allegedly committed by a domestic court, unless and in so far as they may have infringed rights and freedoms protected by the Convention and unless that domestic assessment is arbitrary or manifestly unreasonable (see, *inter alia*, *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017; *Alparslan Altan v. Turkey*, no. 12778/17, § 110, 16 April 2019; and *Sacharuk*, cited above, § 146, with further references).

73. However, the Court's powers of review must be greater when the Convention right itself, Article 7 in the present case, requires that there was a legal basis for a conviction and sentence. Article 7 § 1 requires the Court to examine whether there was a contemporaneous legal basis for the applicant's conviction and, in particular, it must satisfy itself that the result reached by

the domestic courts was compatible with Article 7. To accord a lesser power of review to this Court would render that provision devoid of purpose (see *Kononov*, cited above, § 198, and *Rohlena v. the Czech Republic* [GC], no. 59552/08, § 52, ECHR 2015). The Court must therefore verify that at the time when an accused person performed the act that led to his or her being prosecuted and convicted there was in force a legal provision that made that act punishable, and that the punishment imposed did not exceed the limits fixed by that provision. While the text of the Convention is the starting-point for such an assessment, having regard to its aim, which is to protect rights that are practical and effective, the Court may take into consideration the need to preserve a balance between the general interest and the fundamental rights of individuals and the notions currently prevailing in democratic States (see *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, § 145, ECHR 2000-VII; *Jasuitis and Šimaitis v. Lithuania*, nos. 28186/19 and 29092/19, § 114, 12 December 2023; and *Sacharuk*, cited above, § 147).

74. In sum, the Court must examine whether, in the light of the above-mentioned principles, there was a sufficiently clear legal basis for the applicant's conviction (see *Kononov*, cited above, § 199).

(b) Application of those principles to the present case

75. The applicant is a lawyer by profession, and he served as a district court judge between 1993 and 1997. In February 2017 he applied for a position within either of the vetting bodies established to vet members of the judiciary. In his application for that role the applicant failed to indicate that in 1997 he had been dismissed from his previous position as a Tirana District Court judge as a result of disciplinary proceedings against him. He maintained that he had not been required to disclose the dismissal because, in his legal understanding, the disciplinary measure had ceased to have legal effect.

76. The Court notes that the applicant was found guilty and convicted of falsification of a document under the first paragraph of Article 186 of the Criminal Code (see paragraphs 13 and 14 above). The Court is not called upon to rule on the applicant's individual criminal responsibility, that being primarily a matter for assessment by the domestic courts. What the Court must examine is whether the applicant could have known from the wording of the relevant provisions and, if need be, with the assistance of the courts' interpretation of them, what acts and/or omissions would make him criminally liable. Foreseeability must be appraised from the angle of the convicted person at the time of the commission of the offence charged. The foreseeability of judicial interpretation relates to the elements of the offence (see *Sacharuk*, cited above, § 151, with further references).

77. The core of the applicant's arguments was that the domestic courts had created the criminal offence of "intellectual falsification" of a private document in his case, that the application he had submitted to the

Ombudsperson had not been a “document” within the meaning of Article 186 of the Criminal Code and that, his disciplinary sanction having expired, he had not been required to report it in his application for the role. He did not contest before the Court the factual circumstances regarding his actions – namely, that he had not reported his dismissal from the post of judge in the Tirana District Court on account of a disciplinary sanction against him – but only contested whether those actions could reasonably have been foreseen as constituting a criminal offence.

78. There is no dispute that the applicant was convicted of a criminal offence under Article 186 of the Criminal Code or that the provision was accessible to the applicant. The Court’s task is to assess whether it was reasonably foreseeable to the applicant that his conduct might amount to a criminal offence under that Article.

79. In this connection, the Court does not call into question the domestic courts’ finding that the applicant had intentionally concealed the fact of his 1997 dismissal from the Tirana District Court in his oral answer to an explicit question asked by a member of the parliamentary selection committee. The Court notes, however, that the applicant was not charged with providing false information to Parliament; he was charged and convicted only of falsifying his application for a position on the vetting bodies. Therefore, even assuming that the applicant’s failure to include his dismissal in his job application was deliberate, the decisive issue is whether, at the time of the impugned conduct, it was reasonably foreseeable to the applicant that such a failure would have amounted to “falsification of a document” under Article 186 of the Criminal Code.

(i) *Interpretation of the term “document”*

80. The Court notes, with particular regard to the foreseeability of the interpretation of the statutory provision defining the criminal offence at issue, and its compatibility with the rule of law, that the legislature did not define the meaning of the word “document” as used in that provision. However, the Court has previously noted that the wording of many statutes is not absolutely precise. The need to avoid excessive rigidity and to keep pace with changing circumstances means that many laws are inevitably couched in terms which, to a greater or lesser extent, are vague (see *Kokkinakis v. Greece*, 25 May 1993, § 40, Series A no. 260-A, with a further reference).

81. The Supreme Court noted that the term “document” was not defined in the Criminal Code and that the definition given in the *Dictionary of the Albanian Language* was therefore relevant. However, it is not clear how the dictionary definition relied on by the Government – referencing “a note kept under certain rules, something written or drawn which has historical value” (see paragraph 59 above) – is capable of capturing the applicant’s self-declaration, for which no particular formalities or penalty of perjury was provided for by law.

82. Furthermore, the applicant submits that, historically, the term “document”, within the meaning of Article 186, has been understood consistently as referring only to documents issued by public authorities, or by other entities (such as universities) that have been authorised by law to issue documents of legal relevance. All other provisions within the same chapter of the Criminal Code likewise sanction falsification or tampering with various instruments that tend to fall within the same category of public documents. The applicant argues that his case represents the first time ever that the domestic courts have applied Article 186 to a private document authored by a private individual with no authority to issue public documents or certifications of any kind.

83. The Court finds merit in the applicant’s submissions. It notes, in this connection, that in its judgment no. 00-2017-581 (111) of 12 July 2017 the national Supreme Court included a brief, obiter statement to the effect that “intellectual falsification” under Article 186 could be committed by a natural person who, in a document, expresses a will or assumes rights of obligations that, in reality, he or she has not expressed or assumed (see paragraph 40 above). This precedent was the only one relied upon by the Supreme Court in the applicant’s case, as regards private documents. The Court notes, however, that the 2017 judgment postdates the commission of the supposed offence by the applicant, through the filing of his self-declaration with the Ombudsperson on 3 February 2017. Secondly, the 2017 case concerned the use by the accused of an entirely falsified instrument that had the appearance of a document issued by a public authority, and was therefore hardly relevant to the facts of the applicant’s case or falsification of private documents more generally. Thirdly, the definition of “private document” adopted by the Supreme Court in the applicant’s case (see paragraph 90 below) was both significantly broader and materially different from the one contained in the 2017 precedent, which focused on fictitious transactions between private individuals. Finally, the Court notes that the Government have not produced any rulings of the domestic courts demonstrating that, prior to the judgments delivered in the present case, it had been held that private documents of any kind were also encompassed by the criminal offence of falsification of documents under Article 186 of the Criminal Code.

(ii) The nature and content of the allegedly falsified “document” and its legal implications

84. As to the nature of the application for employment at issue, the Court notes that it did not have a prescribed form and that the applicant had been free to compose it himself. The content of the application was regulated under section 6 of the Vetting Act. The Act expressly required applicants to indicate whether, at the time of application, they were subject to any disciplinary sanctions that had not lapsed. The applicant contended, however, that the disciplinary sanction of dismissal from office imposed on him in 1997 had

expired in 2004 and could not serve as a bar to public service employment two decades later. In the view of domestic courts, the disciplinary sanction of dismissal could not expire and thus remained in force indefinitely. The Court notes however that, at the time of the applicant's self-declaration, it is possible that some ambiguity remained on this point as to the governing law and its application to the facts.

85. The Court notes in that connection that the applicant's disciplinary sanction was applied in 1997. Unlike current law, section 33 of the 2008 Judiciary Act did not specifically provide that "very serious" disciplinary infractions, such as those resulting in dismissal, could never be expunged (see paragraph 30 above). Furthermore, section 61 of the Law on Civil Servants from 2013 (amended in 2014) provided that all disciplinary measures related to the employment of civil servants expired after seven years (see paragraph 31 above). The present Law on the Status of Judges and Prosecutors, which prescribes that the disciplinary measure of dismissal "shall not be erased and shall not be removed from [an individual's] record" (see paragraph 32 above), came into effect only in 2016 and did not indicate that the provision applied retroactively.

86. In the case of *Besnik Cani v. Albania* (no. 37474/20, § 5, 4 October 2022) the Court noted that, under the Vetting Act, "Albanian citizens who, among other conditions, had not been subjected to the disciplinary measure of dismissal from office (*masë disiplinore e largimit nga puna*) or who had not been subjected to another disciplinary measure that was still in force could be appointed members of the vetting bodies". It also accepted that the Vetting Act provided that a candidate who had been subject to the disciplinary measure of dismissal from office at the time of his or her application for the position of SAC judge could not be appointed to that position (*ibid.*, § 95), and that the parties in that case (the Albanian Government and the applicant in that case, Mr Besnik Cani) agreed that the disciplinary measure of dismissal against the applicant in the present case – who was referred to as L.D. in that judgment – had remained in force (*ibid.*, § 96).

87. However, in the case of *Besnik Cani* the Court did not have to address the issue of the foreseeability of the applicant having been held criminally liable for his failure to report his previous role as a judge and his dismissal from that post in his application for a position on the vetting bodies, which is the main issue in the present case.

88. In the Court's view, the applicant must have been aware of the State authorities' position that the disciplinary measure of dismissal imposed on him had not been expunged because, only a couple of months before his application to be appointed a member of the vetting bodies, he had been disqualified from a competition to be appointed a judge of the Tirana District Court precisely because of the fact that the measure had still been on his record (see paragraph 8 above). Thus, he could not have been unaware of that fact and must have known that the disciplinary measure of his previous

dismissal from the position of the Tirana District Court judge had still been kept in the official record.

89. On the other hand, it also fell to the domestic authorities to employ all the means available to them to ensure that candidates for members of the vetting bodies fulfilled the statutory requirements for their position. The Court agrees with the appeal court’s assessment that the relevant authorities were under an obligation to verify that the applicant’s application for a position on the vetting bodies complied with the statutory requirements for the position (see paragraph 16 above). Pursuant to section 7(4) of the Vetting Act, applicants were required to provide official “documents” certifying that they meet all the eligibility requirements. The Government did not refer to any difficulties in verifying whether the applicant had been subject to the disciplinary measure of dismissal from office in the past. On the contrary, as stated above, that information was a matter of official record and had been cited no later than in 2016 as a ground for disqualifying the applicant from the competition to be appointed a judge of the District Court of Tirana.

90. The Court further notes that it is Article 190 of the Criminal Code that sanctions the falsification of forms. It expressly criminalises the act of providing false information on forms submitted to State bodies (see paragraph 26 above). Indeed, the applicant had initially been charged with that offence, but the charges against him were later reclassified under Article 186 of the Criminal Code. For example, the said Article is expressly mentioned in the Decriminalisation Act, which requires that persons to be appointed to public office must complete and sign a self-declaration (see paragraph 34 above), whose format is annexed to the law, declaring the absence of grounds preventing their appointment. Persons who submit false information in that form are criminally liable under Article 190 of the Criminal Code. In contrast, the Vetting Act contains no such warning as regards applications for positions on the vetting bodies. The absence of such a warning appears to support the applicant’s position that the content of the application for a position on the vetting bodies could not have led to criminal liability for the falsification of documents.

(iii) Subsequent practice on falsification of private documents

91. The Court reiterates that the Government have not submitted any case-law of the domestic courts applying the concept of “intellectual falsification” of a private document prior to 3 February 2017, which was when the applicant submitted his application for a position on the vetting bodies. The applicant’s case appears to have been the first time that the Supreme Court adopted a significantly broader definition of intellectual falsification such that the offence could be committed “where a specific rule of [statutory] law imposes on the [defendant] an obligation to verify the facts contained in the document to be drafted by him”.

92. The Court further notes that in two similar cases that were decided after the applicant's case the Supreme Court appears to have adopted an opposite, or at least divergent, position, without sufficiently distinguishing its approach. First, in the case of A.F. – who had also omitted information about her prior dismissal as a judge in her application to be appointed a member of the vetting bodies – the national authorities, including the Supreme Court, held that her conduct had not amounted to the criminal offence of falsification of documents (see paragraphs 35-38 above).

93. Secondly, in the case of E.Ç., decided by the Supreme Court in September 2023, that court held that an allegedly fictitious contract signed before a notary had not amounted to “a falsified document” (see paragraph 39 above).

94. Lastly, certain other important aspects of the national practice on falsification of private documents continue to remain undecided or subject to divergent interpretations to this date. Thus, in the applicant's case, the three-judge bench of the Supreme Court adopted the position that falsification of a private document only carries criminal liability if the person has used the tampered document to obtain some unfair legal benefit or to cause harm to others; whereas “useless falsity” (“*falsiteti i padobishëm*”) is not criminal *per se* (see paragraph 22 above). However, in a more recent case, a different criminal bench of the Supreme Court appears to have construed the offense as being a formal one, irrespective of any consequences that might arise from the act of falsification (see paragraph 45 above).

95. The above circumstances show that the Supreme Court created a new offence in the applicant's case and has not followed its own approach consistently after that.

96. Having regard to the above-mentioned considerations as to the meaning of the word “document” in domestic case-law; the novel, broad and unforeseeable definition adopted by the Supreme Court of a private document subject to “intellectual falsification” (apparently for the first time in the applicant's case); and bearing in mind the apparent deviation by the Supreme Court from such definition in subsequent cases, the Court considers that, in the determination of the criminal charge against the applicant of the offence of falsification of a document, the provisions of Article 186 of the Criminal Code were extensively and unforeseeably construed to his detriment, in a manner which could not be said to have constituted a development consistent with the essence of the offence. Even as a professional lawyer, it would have been difficult for the applicant to have foreseen that the domestic law would be applied to his situation in such a manner and to have known that omitting to mention the disciplinary sanction previously imposed on him could result in a criminal sanction.

97. Accordingly, there has been a violation of Article 7 of the Convention as regards the applicant's conviction for the offence of falsification of documents.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicant claimed the equivalent of 54 gross monthly salaries for the period between 9 December 2021, when he was dismissed from the position of an SAC judge, and 17 June 2026, when his nine-year term at that body would have ended. He further claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

100. The Government considered the claims unfounded and excessive.

101. As regards the applicant’s claim for pecuniary damage, the Court notes that the violation found concerns the criminal proceedings against the applicant, and not his dismissal. It does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

102. As regards non-pecuniary damage, the Court observes that the applicant has the possibility of requesting the reopening the domestic proceedings under Article 450 of the Code of Criminal Procedure following the delivery of the present judgment (see paragraph 27 above). In principle, this would constitute the most appropriate remedy in respect of the violation of Article 7, provided that, when requested, this remedy is implemented diligently and in full conformity with the Court’s findings in this judgment. The Court therefore considers that the finding of a violation of Article 7 constitutes sufficient just satisfaction in the present case, and accordingly dismisses the applicant’s claims in this respect (see *Yüksel Yalçınkaya*, cited above, §§ 406-07 and 425 and the references therein, see also *Delga v. France*, no. 38998/20, § 77, 9 July 2024).

B. Costs and expenses

103. The applicant also claimed EUR 8,000 in respect of costs, namely “legal expenses by” his lawyers.

104. The Government contested that claim, considering it unfounded and unsupported by any evidence.

105. According to the Court’s case-law, 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 (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 370, 28 November 2017). In the present case, the applicant did not specify whether his claimed

concerned the costs incurred before the domestic courts or before the Court. In any event, the applicant did not submit any documents in support of the alleged costs and expenses he had incurred. The Court therefore rejects the applicant's claim under this head (compare *Bülent Bekdemir v. Türkiye*, no. 42881/18, § 73, 17 June 2025).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 7 of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant;
4. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 October 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President