



Private and Family Life vs. Albanian Judicial Vetting Reform: The Proportionality Analysis Through European Court of Human Rights Jurisprudence

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Abstract: *Since 2016, Albania has undertaken extensive judicial reforms to enhance judicial integrity and combat corruption, involving constitutional amendments and the introduction of several new laws. A central component of these reforms is the “vetting process” designed to reassess all sitting judges and prosecutors according to three primary criteria: assets assessment, background assessment, and professional competence. The established vetting bodies, consisting of the Independent Qualification Commission (IQC) at the first instance and the Special Appeal Chamber (SAC) for appeals, are required to issue a reasoned decision after each re-evaluation phase, either confirming the individual’s position or suspending or dismissing them from office.*

Albeit the reform’s purpose of strengthening judicial independence is legitimate, it raises significant concerns regarding its impact on private and family life, particularly in cases where dismissals or suspensions occur due to the failure to justify assets.

This paper investigates the application of the proportionality test in balancing Albania’s judicial vetting process with the right to private and family life, enshrined in Article 8 of the European Convention on Human Rights (ECHR), examining the tension between the legitimate aim of judicial accountability and the protection of fundamental rights, with particular attention to recent ECtHR jurisprudence on asset assessments and fair proceedings.

The paper provides a broader reflection on how ECtHR case law can serve as a safeguard against the consequences of judicial reforms that might unduly disrupt private and family life, underlining the need to adhere to the proportionality principle.

In conclusion, the paper asserts that the ECtHR’s proportionality doctrine is a fundamental mechanism for ensuring that Albania’s judicial vetting process respects and carefully balances the public interest and the potential violation of private and family life.



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1. INTRODUCTION

In the current context of judicial reform, as Albania attempts to enhance judicial accountability and credibility of the judicial system, including the vetting of judges and prosecutors, it raises relevant questions regarding the protection of rights enshrined by the European Court of Human Rights (ECHR). The principle of proportionality, a cornerstone of ECHR jurisprudence, serves as a lens through which this divergence can be analyzed, balancing the state’s legitimate interest in promoting judicial integrity, and public trust and fighting corruption against the individual’s right to privacy and family life.

As these reforms are enacted, it is vital to assess how they correspond with or encroach upon established human rights, ensuring that the quest for a reliable judiciary does not compromise fundamental liberties.

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This paper explores the application of the proportionality test in reconciling Albania's judicial vetting process with the right to family life as guaranteed under Article 8 of the European Convention on Human Rights (Council of Europe, 1950). It delves into the inherent tensions between the goals of judicial accountability and the protection of individual rights, particularly focusing on the potential risks to human rights posed by judicial reforms. The paper underscores the importance of the European Court of Human Rights (ECtHR) case law in ensuring that the reforms, while aimed at enhancing judicial integrity, do not lead to disproportionate interference with family life or other personal freedoms. Through this analysis, the paper highlights the critical role of proportionality in safeguarding individuals from unnecessary disruption while pursuing systemic improvements in the judiciary.

1.1. Research Questions

This research aims to address several questions regarding the judicial vetting process in Albania and its effects on the right to privacy and family life.

1. How does the European Court of Human Rights (ECtHR) define and apply the principle of proportionality?
2. Which aspects of the vetting process intersect with the rights to private and family life?
3. How has the judicial vetting process in Albania affected the private and family life of judges and prosecutors, and how do these measures align with the ECtHR's case law concerning privacy and proportionality?

1.2. Methodology

To address these research questions, the methodology blends legal and doctrinal, and case law review, focusing on the compatibility of Albania's judicial vetting reform with the standards established in Article 8 of the European Convention on Human Rights.

Doctrinal Research: A review of existing scholarly literature on proportionality and the right to private and family life will help establish a theoretical framework and identify gaps in the current research. This will further inform the analysis and provide a solid foundation for evaluating the effectiveness of Albania's judicial reforms.

Primary legal sources, including relevant Convention Articles, alongside secondary sources such as academic literature, are analyzed to conceptualize the doctrine within the broader principles of the ECtHR. Hence, the paper relies primarily on the desk research method, utilizing ECtHR judgments and the ECHR as primary sources, and academic articles as secondary sources.

Case Law Analysis –The HUDOC database has served to select case law based on its relevance to the topic, especially those on the dismissal of judges and prosecutors following the vetting process. Case law analysis emphasizes the Court's reasoning, particularly how it balances the right to privacy and family life with the legitimate aims protected by the Albanian state.

2. GENERAL BACKGROUND OF THE VETTING PROCESS IN ALBANIA

Since 2016, Albania has embarked on an ambitious judicial reform initiative aimed at strengthening judicial integrity and combating systemic corruption. Albania has faced significant challenges, primarily characterized by elevated corruption levels, a deficiency in integrity, and a lack of accountability within its judiciary. The process of vetting has arisen as a crucial response to the

imperative of eliminating corruption and reinstating the trust of the Albanian populace in the judicial framework (Maxhuni & Cucchi, 2017, p. 4).

This effort, which involves constitutional amendments and new legislation, has introduced a transitional “vetting process” as a cornerstone of the reform. Its purpose is explicitly outlined in Article 1 of the Vetting Law, which aims to guarantee the functioning of the rule of law, ensure the independence of the justice system, and restore public trust in judicial institutions. (Law No. 84, 2016).

As specified in Article 4, the vetting process serves to reassess all sitting judges and prosecutors against three primary criteria: assets assessment, background evaluation, and professional competence.

Asset Assessment (Article 30). Property assessment involves declaring and verifying assets, ensuring their legality and the legitimacy of their sources. It also examines the fulfillment of financial obligations and considers private interests related to the subject of re-evaluation and their associates.

Background Assessment (Article 34) aims to verify the declarations and data of the subject of re-evaluation and inappropriate contacts with individuals involved in organized crime, as outlined in Article DH of the Annex to the Constitution.

Professional Assessment (Article 40) focuses on evaluating the ethical and professional activities of the subjects undergoing re-evaluation. This is conducted by the relevant legislation governing the status of judges and prosecutors.

Decisions on the re-evaluation are made by two specialized bodies: The Independent Qualification Commission (IQC): Conducts the initial investigation and issues decisions.

The Special Appeal Chamber (SAC): Handles appeals from magistrates or the Public Commissioner, who represents public interests in the process. Both bodies are mandated to provide reasoned decisions that confirm, modify, or overturn outcomes, including suspension or dismissal from office.

A unique feature of Albania’s vetting process is the International Monitoring Operation (IMO), established under Article B of the Annex to the Constitution. Led by the European Commission, the IMO supports and oversees the process, ensuring its alignment with European and Euro-Atlantic integration standards. The IMO partners with Albania to enhance the credibility and effectiveness of the vetting initiative, maintaining transparency and accountability. The potential sanctions for judicial officers found lacking in any of the assessment criteria are severe, ranging from dismissal from office to suspension with mandatory education for improvement.

3. DEFINITION AND SIGNIFICANCE OF PROPORTIONALITY IN THE EUROPEAN COURT OF HUMAN RIGHTS JURISPRUDENCE

The principle of proportionality is a fundamental interpretive tool established under the European Convention on Human Rights (ECHR), explicitly referenced in Articles 8–11 and applied on a case-by-case basis by the European Court of Human Rights (ECtHR). The article focuses on the application of this principle in cases concerning the dismissal of judges and prosecutors resulting from the vetting process within the justice sector. Specifically, it examines how the proportionality principle has been applied in the context of limitations imposed on the right to private and family life under Article 8 of the Convention.

As a cornerstone of the ECtHR's jurisprudence, the principle of proportionality serves as a balancing mechanism to reconcile competing rights and interests protected under the ECHR. The article analyzes the meaning and components of the principle, as well as its application in cases relating to the vetting process.

The principle of proportionality ensures that state intervention in fundamental rights is justified by law, legitimate, and necessary. The ECtHR employs this principle to evaluate whether interferences with individual rights strike an appropriate balance between the rights at stake and the public interest. The equilibrium is just when the limitation does not infringe upon the fundamental nature of the right and does not result in the erosion of its substantive essence. (Trykhlid, 2020, p. 128).

Article 8 paragraph 2 of the ECHR provides that: *“Interference by public authorities with this right is permitted only if it is lawful, necessary in a democratic society, and pursues legitimate aims such as national security, public safety, economic well-being, crime prevention, health, morals, or the protection of others’ rights and freedoms.”*

The established criteria aim to prioritize rights by imposing additional challenges that states must navigate to assert a public interest defense (McHarg, 1999, p. 685).

Since the Court's primary responsibility is to resolve matters by balancing diverse human rights and interests in a dynamic society, it is necessary to adopt an ongoing reassessment of methodologies, with proportionality as a key principle to safeguard human rights (Trykhlid, 2020, p. 130).

The proportionality principle consists of three core components: legitimacy, legitimate aim, and necessity. These components are essential in assessing whether a measure interferes with human rights in a manner justified under a democratic society. The following part elaborates on these elements through relevant case law concerning the alleged violation of Article 8 of ECHR due to the vetting process.

3.1. Interference Prescribed by Law

The first component of the principle of proportionality, namely the requirement that actions be “in accordance with the law,” mandates that measures have a solid foundation in domestic law and fulfill the criteria of accessibility and foreseeability. In other words, the law must be sufficiently clear to enable individuals to regulate their conduct (Xhoxhaj v. Albania, 2021).

In the case of *Xhoxhaj v. Albania*, the applicant, a former judge of the Constitutional Court of Albania, was dismissed from her position following a vetting process. Moreover, she was permanently barred from re-entering the justice system due to concealing ownership of a 101 sq.m. flat during the asset evaluation and for undermining public trust by failing to recuse herself from Constitutional Case (Xhoxhaj v. Albania, 2021).

According to the Court, the Vetting Act and asset disclosure regulations, which were accessible and had undergone constitutional review, substantiated the findings regarding the flat, thereby satisfying the legal requirements of foreseeability (para. 384). Consequently, the dismissal for undermining public trust was grounded in broadly recognized disciplinary rules, further reinforced by specific provisions such as section 36(1)(c) of the Constitutional Court Act and Article 72 of the CCP (§386). This interference was also considered foreseeable (Xhoxhaj v. Albania, 2021).

3.2. Legitimate Aim

Any interference must serve a legitimate aim recognized by law. According to Article 1 of the Vetting Act, its purpose is to “guarantee the proper functioning of the rule of law, the true independence of the justice system, as well as the rebuilding of public trust in the institutions of the system” (Law No. 84, 2016). Additionally, the Court highlighted that the Venice Commission had deemed the vetting of judges and prosecutors “not only justified but necessary to protect the country from the scourge of corruption, which, if not addressed, could destroy the judicial system”. The Constitutional Court further emphasized that any restrictions imposed by the Vetting Act were justified by the public interest of combating the level of corruption and restoring public trust in the judiciary. This objective was also connected to the interests of national security, public order, and the protection of the rights and freedoms of others (*Xhoxhaj v. Albania*, 2021).

In *Thanza v. Albania*, the applicant, a dismissed Supreme Court judge challenged his removal and the legal ban on him practising law as a private advocate after his dismissal under Article 8 of the Convention arguing that it had severely impacted his financial security, professional career, and reputation (*Thanza v. Albania*, 2023).

He claimed a loss of income, pension benefits, and the opportunity to serve as a judge or engage in other legal professions, emphasizing that dismissal, rooted in critiques of his judicial performance, undermined his professional and social reputation.

The dismissal was based on allegations of misconduct, criminal behavior, and inappropriate connections with organized crime, which not only damaged his professional reputation but also stigmatized him as unfit for judicial duties. This significantly affected his employment prospects and severely impacted his personal and social life, making it difficult to maintain professional relationships and earn a living. However, in line with the findings in *Xhoxhaj* the Court found no ground to question the legitimacy of the Vetting Act objectives, including the vetting of a Supreme Court judge, which aligned with the interests of national security, public safety, and the protection of the rights and freedoms of others, as outlined in Article 8 § 2 of the Convention (*Thanza v. Albania*, 2023).

3.3. Necessity test

To determine if an infringement on Article 8 is “necessary in a democratic society,” the Court balances the interests of the member State against the applicant’s rights. In the case of *Dudgeon v. the United Kingdom*, the Court emphasized that “necessary” implies a “pressing social need,” rather than something merely “useful” or “desirable” (*Dudgeon v. the United Kingdom*, 1981). While national authorities are responsible for assessing this need, their decisions can be reviewed by the Court (*Council of Europe*, 2024).

In *Thanza v Albania*, the Court examined whether the vetting bodies exceeded the State’s margin of appreciation in dismissing the applicant and whether they conducted an individualized assessment of the factors leading to his dismissal. It reiterated that serious failures in asset declarations, such as concealing income or justifying excessive lifestyles, can justify dismissal, whereas minor discrepancies should not result in severe sanctions (*Thanza v. Albania*, 2023).

The applicant’s failure to declare a garage, legally acquired by his wife, was not a major issue, instead the vetting bodies focused on two flats purchased in 2000 and 2003. They found insufficient

lawful income during this period and raised doubts about related expenses, which were deemed reasonable concerns. Applying a modest cost-of-living estimate, they identified significant discrepancies between his income and expenditures, along with a prolonged negative financial balance. Hence, the applicant failed to provide adequate evidence of lawful income for asset acquisition. These findings justified the applicant's dismissal under Article 8.

The Court considered the national decision-making process fair and reasonable, and the dismissal was proportionate to legitimate aims. Consequently, no violation of Article 8 was found.

The necessity test further requires domestic authorities to establish the existence of a genuine and pressing social need, along with relevant and sufficient justifications for any interference with human rights and freedoms. Given this requirement, states are generally afforded a wider margin of appreciation in determining the necessity of such measures (Trykhlid, 2020, p. 151).

For a measure to be justified, it must substantially contribute to achieving its intended goal; otherwise, the reasons for its implementation may not be considered "relevant and sufficient" (Gerards, 2013, p. 467). Public authorities are therefore required to provide adequate justification for imposing a specific measure and demonstrate its necessity to achieve a specific goal. Additionally, State interventions must adhere to the principle of minimal interference, meaning that the least restrictive measure should be applied to safeguard the rights of the individuals (Trykhlid, 2020, p. 138). The necessity test further requires domestic authorities to establish the existence of a real pressing social need along with relevant and sufficient reasons for the interference with human rights and freedoms. Therefore, the margin of appreciation in determining the necessity of such measures is wider (Trykhlid, 2020, p. 151).

In *Sevdari v. Albania*, the Court acknowledged the pervasive corruption in Albania's justice system and upheld the necessity of an extraordinary vetting process for judges and prosecutors to address a pressing social need. However, it stressed that the proportionality of sanctions, particularly dismissal, requires a thorough evaluation of individual circumstances (Sevdari v. Albania, 2022). The applicant was dismissed for failing to justify her family's assets, primarily her husband's income from years before their marriage or her appointment as a prosecutor. While tax compliance is essential, the amounts in question represented a minor percentage of their total income, and no evidence of bad faith or illicit activity was found. Additionally, a single missed appeal by the applicant, though noted by the SAC as potentially undermining public trust, was not established as part of a broader pattern of incompetence (Sevdari v. Albania, 2022). The Court emphasized that dismissal is the most severe sanction, entailing a lifetime ban on re-entering the justice system. Such measures should be reserved for cases involving substantial ethical breaches. In this case, the dismissal was disproportionate to the vetting process's aims, as the irregularities were minor and lacked evidence of deliberate wrongdoing. In conclusion, the Court found a violation of Article 8 due to the disproportionate nature of her dismissal. As to individual measures, an appropriate form of redress for the violation of the applicant's right would be to reopen the proceedings, should the applicant request such reopening, and to re-examine the case in a manner that was in keeping with the requirements of Article 8 (Sevdari v. Albania, 2022).

In *Gashi and Gina v. Albania*, the Court examined the first applicant's claim that her suspension disrupted the vetting process and influenced the IQC's decision to dismiss her. However, it found that she failed to substantiate this argument beyond merely citing her suspension as part of her employment status (Gashi and Gina v. Albania, 2023). Applying the consequence-based approach, the Court reiterated that an applicant must demonstrate that the impugned measure had serious consequences

significantly affecting private life. In this case, the first applicant did not establish that her suspension met this threshold. It emphasized that any reputational harm was primarily due to criminal charges rather than the suspension itself, which was accompanied by continued salary payment. Consequently, the Court considers that the negative impact of the suspension was not sufficiently serious to engage her right to respect for her private life under Article 8 of the Convention (*Gashi and Gina v. Albania*, 2023). Regarding the second applicant, the Court noted that he was suspended from 11 May to 8 November 2018, and despite a judgment in his favor, its enforcement was delayed without justification until January 2020. Given the employment-related nature of the dispute, this prolonged inaction was significant. The delay persisted even after the criminal proceedings against him were terminated in April 2019, impeding him from returning to his professional environment and hindering his career and personal development (*Gashi and Gina v. Albania*, 2023). In conclusion, the Court concluded that the second applicant had sufficiently demonstrated that the consequences of his suspension were serious enough to engage Article 8 of the Convention.

4. FUTURE RESEARCH DIRECTIONS

Future research directions may encompass the following:

1. Conducting empirical studies to assess public perceptions of the judiciary both before and after the vetting process, to determine whether the public perceives this process as fair and legitimate, and how these perceptions influence trust in the judicial system.
2. Assessing the role and efficacy of the International Monitoring Organization (IMO) in promoting the credibility and transparency of the vetting process.
3. Exploring the broader implications of judicial reforms on human rights, with a particular focus on the right to a fair trial.
4. Analyzing the evolving jurisprudence of the European Court of Human Rights (ECHR) concerning vetting cases and its influence on shaping future reforms.

5. CONCLUSION

Albania's vetting reform is a crucial response to systemic corruption and the erosion of public trust in the judiciary. The reform was essential for upholding the rule of law and ensuring judicial independence. However, while necessary, the vetting process raises significant human rights concerns, particularly under Article 8 of the ECHR. Severe sanctions, such as dismissal and lifetime bans, can disproportionately affect the private and family life of judges and prosecutors.

To address these concerns, the principle of proportionality plays a vital role in balancing the public interest in judicial integrity with individual rights. ECtHR case law emphasizes that any measures taken must be lawful, necessary, and proportionate. Additionally, ECtHR rulings underscored the need for individualized assessments during the vetting process, ensuring that sanctions are proportionate to the severity of ethical or professional breaches and avoid unnecessary interference with personal rights and freedoms.

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