



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

FIRST SECTION

CASE OF A.D. AND OTHERS v. SWEDEN

(Application no. 22283/21)

JUDGMENT

Art 3 • Expulsion • Applicants' removal to Albania following unsuccessful request for asylum would not entail a breach • No indication domestic proceedings lacked effective guarantees to protect against arbitrary *refoulement* or were otherwise flawed • Failure to demonstrate that Albanian authorities unable or unwilling to obviate any risk of ill-treatment by non-State actors seemingly faced by applicants by providing appropriate protection

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 May 2024

FINAL

07/08/2024

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of A.D. and Others v. Sweden,

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

Marko Bošnjak, *President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 22283/21) against the Kingdom of Sweden lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Albanian nationals (“the applicants”), on 23 April 2021;

the decision to give notice to the Swedish Government (“the Government”) of the complaint concerning Article 3 of the Convention and to declare the remainder of the application inadmissible;

the decision not to have the applicants’ names disclosed;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the decision to indicate an interim measure to the respondent Government under Rule 39 of the Rules of Court and the fact that this interim measure has been complied with;

that the Albanian Government were informed of their right to intervene under Article 36 § 1 of the Convention and did not exercise that right;

the parties’ observations;

Having deliberated in private on 16 April 2024,

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

INTRODUCTION

1. The case concerns the applicants’ removal from Sweden to Albania, following their unsuccessful request for asylum. They complained that their removal would be in breach of Article 3 of the Convention, on account of the risk that they would be ill-treated by non-State actors and the Albanian authorities’ inability to provide appropriate protection.

THE FACTS

2. The applicants are a family, consisting of a father (the first applicant), a mother (the second applicant) and their three children (the third, fourth and fifth applicants). Their details are set out in the appended table. The

applicants, who had been granted legal aid, were represented by Ms E. Hillert, a lawyer practising in Stockholm.

3. The Government were represented by their Agent, Ms H. Lindquist, of the Ministry for Foreign Affairs.

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

I. ASYLUM PROCEEDINGS

A. The Migration Agency

5. On 6 December 2018 the applicants applied for asylum in Sweden.

6. On 11 December 2018 the Migration Agency (*Migrationsverket*) held brief introductory interviews with the first and second applicants, assisted by an interpreter. On 2 January 2019, the Migration Agency held asylum interviews with the first, second and third applicants, assisted by an interpreter.

7. During the asylum interviews the applicants mainly stated the following. The first applicant had worked as a police officer since 1998 and had been involved in police work to stop the production and trading of cannabis. He had resigned in November 2018 and the family had left Albania shortly thereafter. They had left Albania because the eldest daughter in the family (the third applicant) had been the victim of a kidnapping attempt by three unknown masked men on 3 October 2017, which had traumatised her and subsequently led to her developing depression. There had also been two other incidents, during 2017-2018. On one occasion, shots had been fired at the front door of the family's home and on another occasion a hand grenade had exploded near their home. They did not know who had been behind these incidents, but the first applicant believed that it was a result of his work against cannabis as a police officer. The perpetrators of the attempted kidnapping had also made statements which the applicants had perceived as threats and as referring to the first applicant. They had not reported these incidents to the Albanian police or any other law enforcement authority in Albania. They did not trust the law enforcement authorities because of widespread corruption. Making a police report would have aggravated their situation and put the family in greater danger. However, the first applicant had had direct contact with a senior police officer. If they were to return to Albania they would risk being killed. Other people had been killed in their home town, including a former police officer and his wife.

8. During the asylum interviews with the first and second applicants, the Migration Agency presented extracts from country of origin information and stated that, in the light of this information, the Albanian authorities were considered to have both the ability and the willingness to protect their citizens. The applicants were given the opportunity to comment on this and

to submit additional evidence or country of origin information in support of their claims.

9. Subsequently, the applicants submitted documents to the Migration Agency, including a news article and documents which, according to the applicants, consisted of the first applicant's report to the district prosecutor's office on 21 August 2017 regarding an incident on 20 August 2017 where he had been threatened by two armed men, and a document from the Albanian police dated 5 October 2017 regarding the attempted kidnapping of the third applicant on 3 October 2017.

10. On 18 January 2019 the Migration Agency dismissed the applicants' request for asylum and ordered their deportation to Albania.

11. In its decision, the Migration Agency initially noted that the news article submitted supported the applicants' account of the incidents in Albania that had allegedly led to them leaving the country. The Migration Agency also noted that the applicants had submitted documents which included the first applicant's statement before a court, according to which he had, on account of his work as a police officer, been threatened by two unknown armed boys and received several anonymous threatening telephone calls.

12. The Migration Agency furthermore noted that the applicants did not know who had attempted to kidnap the third applicant, shot at the family's door, detonated a hand grenade near their home and threatened the first applicant. Thus, it was unclear both to the applicants and the Migration Agency who had attacked and threatened the applicants. Moreover, it was unclear what the perpetrators' intentions were: whether they just wanted to scare the applicants or whether they had a real intent to harm them physically. Furthermore, it was unclear whether the various incidents were connected. The Migration Agency did not, however, question that the cited incidents had occurred.

13. The Migration Agency stated that the cited incidents were to be viewed as criminal acts committed by unknown individuals, and that it was primarily for the Albanian authorities to prosecute and provide protection against such acts. Persons who considered themselves in need of protection could also be required to exhaust available domestic remedies before seeking international protection.

14. With reference to country of origin information, the Migration Agency found that there were problems with corruption within the police in Albania, but that the country had taken strong action against corruption through a number of measures. Considering this information, the Migration Agency concluded that the Albanian authorities had a general ability and willingness to protect their citizens.

15. Since the applicants had not reported the attempted kidnapping of the third applicant to national law enforcement authorities, the Migration Agency concluded that they had not acted in a way that could reasonably be required of them before seeking international protection. The applicants' explanation

for this – that it could aggravate their situation – was not considered acceptable in the light of the relevant country of origin information. Furthermore, while the first applicant had reported the threats that he had received due to his work as a police officer to the Albanian authorities, he had not known who was behind the threats, and thus it was hard for the authorities to act. Moreover, he had left his employment as a police officer, and thus it was reasonable to assume that any threat to him on account of his work should have ceased.

16. The Migration Agency held that if the applicants were at risk of violence or other ill-treatment upon return to Albania, they should turn to the Albanian law enforcement authorities. In view of the information provided by the applicants, the Migration Agency concluded that there was no reason to believe that they would not receive assistance from those authorities.

B. The Migration Court

17. The applicants appealed against the Migration Agency’s decision to the Migration Court (*Migrationsdomstolen*). They stated, *inter alia*, that the first applicant had spoken to senior police officers and to officials within the prosecutor’s office in Albania, as was evidenced by the documents they had submitted, but that this had not resulted in any help or protection. They further stated that the threats against them had continued after they had left the country and that the judicial system in Albania did not function properly.

18. In the proceedings before the Migration Court the applicants were represented by a lawyer who was appointed as public counsel for them. Their request for an oral hearing was refused.

19. On 28 April 2020 the Migration Court upheld the Migration Agency’s decision.

20. The court noted that it followed from available country of origin information, namely a report from the United Kingdom Home Office, entitled “Country Policy and Information Note – Albania: Background information, including actors of protection and internal relocation”, dated 24 July 2017, and a report from the European Asylum Support Office entitled “Albania Country Focus”, dated 1 November 2016, that Albania had a largely functioning judicial system. Nonetheless, corruption was a problem and the police often hesitated to get involved in various disputes. Against that background, the court concluded that it was not clear what kind of protection the Albanian authorities could offer against the type of threats and abuse originating from criminal gangs cited by the applicants. As it was not considered possible to establish that the protection offered by the Albanian authorities reached such a level that it could generally be assumed to be effective, the Migration Court concluded that an assessment thus had to be made on the basis of the individual circumstances of the case.

21. As the first applicant had worked for a long time within the Albanian police, the court found it reasonable to assume that he had good connections within the Albanian judicial system. The court also noted that the conflict in which the family had become involved had its basis in the first applicant's work as a police officer and that he had had considerable contact with the police and prosecutors regarding the incidents to which the family had been exposed. In the light of this, the court found that, even if the family felt that they had not received the help they needed, the information in the case did not suffice to conclude that the Albanian authorities lacked the will or ability to act on threats against the family.

C. The Migration Court of Appeal

22. On 22 June 2020 the Migration Court of Appeal (*Migrationsöverdomstolen*) denied the applicants leave to appeal.

II. SUBSEQUENT PROCEEDINGS

A. The Migration Agency

23. On 3 July 2020 the applicants lodged an application with the Migration Agency, submitting that there were new circumstances constituting impediments to enforcement of the deportation order and requesting that they be granted either residence permits or a re-examination.

24. The applicants submitted that an explosion had occurred at the family's house in Albania on 7 January 2020 and that the first applicant's mother, who still lived in the house, had been forced to seek medical care. The applicants stated that they had not mentioned this incident at an earlier stage because they had been waiting for supporting evidence to arrive.

25. In support of their claims the applicants submitted photographs, news articles, medical certificates concerning the first applicant's mother and a document from the Albanian police. From the police document, it followed that the explosion had caused major material damage to the house and that the first applicant's mother had received an anonymous telephone call three days before the explosion in which someone had said that the first applicant "has nowhere to hide, he must pay the debts he owes us". In the same document, the police stated that the explosion was connected with the incident in August 2017, when the first applicant had been threatened due to his job as a police officer, and the incident in October 2017, when unknown persons had tried to kidnap the third applicant.

26. Subsequently, the applicants added that there had been a second explosion at their house in Albania, on 12 July 2020. They submitted news articles and a document from the Albanian police concerning this incident.

27. On 20 July 2020 the Migration Agency refused the applicants' request for residence permits or a re-examination.

28. In its decision, the Migration Agency initially emphasised that when a deportation order had become final, it was not possible for the Migration Agency to reconsider an assessment made by a higher authority. When considering impediments to enforcement of a deportation order, the Migration Agency thus only considered new circumstances not previously cited during the asylum proceedings. Mere modifications or additions to previously cited circumstances were not sufficient. If a new circumstance or new evidence only served to verify previously cited circumstances relating to an alien's need for protection in Sweden, there was normally no reason to undertake a new assessment of the entire case.

29. The Migration Agency did not question that the incidents cited by the applicants, the two explosions and the anonymous threat to the first applicant's mother, had occurred. These events had not previously been subject to assessment. However, the Migration Agency and the Migration Court had previously assessed the applicants' earlier claims regarding threats and attacks directed at them and had concluded that these were the actions of unknown individuals. In the light of this, and since there was information indicating that the new incidents were connected to the previous incidents, the Migration Agency concluded that, regardless of whether the perpetrators were the same as before, the newly cited incidents constituted additions to previously examined circumstances.

30. Notwithstanding this conclusion, the Migration Agency held that it had previously been established that State protection was available in Albania and that the family had not exhausted this remedy. The applicants had now submitted two police reports. However, there was no information concerning what had happened as a result of these reports or indications that the applicants had gone through the entire legal process in order to obtain help from the Albanian authorities. The Migration Agency therefore found that the documents submitted did not suffice to conclude that the applicants had now exhausted the available State protection in Albania. The Migration Agency concluded that the newly cited incidents could thus not be assumed to constitute a lasting impediment to enforcement of the deportation order. Therefore, the applicants could not be granted residence permits or a re-examination.

B. The Migration Court

31. On 10 August 2020 the Migration Court upheld the Migration Agency's decision on appeal.

32. In its judgment, the court noted that the fact that the applicants were involved in a conflict had been assessed in the asylum proceedings. In those proceedings it had been noted that the applicants had not known who was

behind the cited threats and attacks. It had also been found that the Albanian authorities had the ability and will to protect their citizens and that the applicants had not exhausted the possibilities of obtaining the Albanian authorities' protection.

33. The court noted that the information that the family's house in Albania had been subjected to attacks while the applicants were in Sweden was new, but found that it was an addition to the previously examined circumstances. The fact that the applicants had reported these incidents to the police did not alter the assessment. Furthermore, the court found that it had not emerged that the situation in Albania had changed to such an extent that it could be assumed to constitute a lasting impediment to enforcement of the deportation order.

C. The Migration Court of Appeal

34. On 21 September 2020 the Migration Court of Appeal denied the applicants leave to appeal.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

35. The basic provisions applicable in the present case, concerning the right of aliens to enter and remain in Sweden, are laid down in the Aliens Act (*utlänningslagen*, 2005:716).

36. An alien who is considered to be a refugee or otherwise in need of protection is, with certain exceptions, entitled to a residence permit in Sweden (Chapter 5, section 1, of the Act). The term "refugee" refers to an alien who is outside the country of his or her nationality owing to a well-founded fear of being persecuted on grounds of race, nationality, religious or political beliefs, or on grounds of gender, sexual orientation or other membership of a particular social group, and who is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country (Chapter 4, section 1). By "an alien otherwise in need of protection" is meant, *inter alia*, a person who has left the country of his or her nationality because of a well-founded fear of being sentenced to death or receiving corporal punishment, or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 4, section 2). The above applies irrespective of whether the persecution or ill-treatment is at the hands of the authorities of the country or if those authorities cannot be expected to offer effective protection against such acts by private individuals.

37. As regards the enforcement of a deportation or expulsion order, account has to be taken of the risk of capital punishment or torture and other inhuman or degrading treatment or punishment. According to a special

provision on impediments to enforcement, an alien must not be sent to a country where there are reasonable grounds for believing that he or she would be in danger of suffering capital or corporal punishment or of being subjected to torture or other inhuman or degrading treatment or punishment (Chapter 12, section 1). In addition, an alien must not, in principle, be sent to a country where he or she risks persecution (Chapter 12, section 2).

38. Under certain conditions, an alien may be granted a residence permit even if a deportation or expulsion order has acquired legal force. This is the case where new circumstances have emerged which indicate that there are reasonable grounds for believing, *inter alia*, that enforcement would put the alien in danger of being subjected to capital or corporal punishment, torture or other inhuman or degrading treatment or punishment, or where there are medical or other special reasons why the order should not be enforced (Chapter 12, section 18). If a residence permit cannot be granted under these criteria, the Migration Agency may instead decide to re-examine the matter. Such re-examination is to be carried out where it may be assumed, on the basis of new circumstances relied upon by the alien, that there are lasting impediments to enforcement of the nature referred to in Chapter 12, sections 1 and 2, and that these circumstances could not have been raised previously or the alien shows that he or she has a valid excuse for not having done so. Should the applicable conditions not have been met, the Migration Agency will decide not to grant re-examination (Chapter 12, section 19).

II. RELEVANT COUNTRY INFORMATION ON ALBANIA

A. European Commission

39. A report from the European Commission entitled “Albania 2023 Report”, dated 8 November 2023, drafted in relation to the EU accession negotiation process with Albania, sets out, *inter alia*, the following in its summary:

“Albania has a moderate level of preparation on the **functioning of the judiciary**. The implementation of the justice reform continued, resulting in good progress overall. ... The Specialised Structure against Corruption and Organised Crime (SPAK) achieved further results, and a new Chief Special Prosecutor was elected in December 2022 after a sound process. The efficiency of the judicial system and access to justice continued to be affected by the long timescale of proceedings, increased workload and high backlog of cases, which remains particularly high in appeal and first instance courts. Progress was made in addressing judicial vacancies through the swearing-in of 40 new magistrates in October 2023. The temporary evaluation of all judges and prosecutors (**the vetting process**) has continued to advance at a satisfactory pace. By 6 October, 57% of the vetting dossiers processed had resulted in dismissals, resignations or termination of mandate. In June 2023, the Special Court of First Instance against Corruption and Organised Crime sentenced the former Head of the Constitutional Court to 6 months in prison for false declaration and concealment during the vetting process. Albania must ensure that criminal procedures are systematically initiated against judges and prosecutors whose vetting process revealed criminal elements. ...

Albania has some level of preparation in the **fight against corruption**. Despite some progress and continued efforts in fighting corruption, it remains an area of serious concern. SPAK bodies have conducted investigations in a number of high-level cases, ordering several arrests and convictions in a number of high level cases. Overall, corruption is prevalent in many areas of public and business life and preventive measures continue to have a limited impact, particularly in vulnerable sectors. Increasing the number of final convictions at a high-level remains an important priority to further tackle the culture of impunity. Further efforts are needed to ensure due judicial follow-up in vetting cases where there are indications of criminal offences. The institutional capacity of the Anti-Corruption Directorate-General in the Ministry of Justice needs to be further strengthened and the composition of the Ethics Commission needs to be revised. The sectors most vulnerable to corruption require targeted risk assessments and dedicated actions.

Albania has some level of preparation in the **fight against organised crime**, with a continued good level of cooperation with EU Member States and EU agencies. More efforts need to be made in the fight against illicit drugs, including through an increase in the capacities of the law enforcement authorities. ... Progress that has [been] achieved with the seizure and confiscation of assets linked to organised crime must continue. Efforts also need to continue to ensure an increase in the number of prosecutions and final convictions, especially in high-level cases, and to establish the asset recovery office. ... The track record on money-laundering and high-level corruption cases remains insufficient, and financial investigations need to be further developed.”

B. Swedish Ministry for Foreign Affairs

40. A report from the Swedish Ministry for Foreign Affairs entitled “Albania – Human rights, democracy and the rule of law: situation as of 15 May 2021” (*Albanien – Mänskliga rättigheter, demokrati och rättsstatens principer: situationen per den 15 maj 2021*), dated 1 December 2021 includes the following information (translated from Swedish by the Registry):

“Pursuant to the constitution, the judicial system is independent from political power, but in practice it is characterised by politicisation and widespread corruption. Public confidence in the judicial system is low.

Extensive constitutional reforms have been under way for several years, with a view to ensuring judicial independence and reducing political influence. Several new institutions have been established, such as the High Judicial Council and the High Prosecutorial Council, which appoint judges and prosecutors.

At the same time, there has been an in-depth review of all judges and prosecutors in the country, resulting in a large number of members of the judiciary, including a large proportion of Supreme Court and Constitutional Court judges, being removed from their positions. Recruitment to these positions is ongoing. Following a hiatus, the Supreme Court and Constitutional Court were able to resume their activities in 2021 as sufficient new judges had been appointed. Significant progress has been made in the judicial reforms, but challenges remain with regard to implementation.

...

The legal and institutional framework for an effective public administration is in place. Challenges include weak capacity, politicisation and corruption. Corruption is a widespread problem, both in the public sector and in business life, but it is rare that

high-ranking politicians or civil servants are prosecuted and sentenced for corruption or misconduct. In Transparency International's 2020 index concerning perceived corruption, Albania ranks 104 out of 180 countries reviewed, a figure that has deteriorated in recent years.

...

In practice, corruption and shortcomings in the judicial system contribute to many crimes not being prosecuted and judgments not being enforced.

Organised crime is a serious problem in Albania. A special prosecutor's office and special court working against organised crime and corruption (SPAK), began its work in December 2019. Nevertheless, the number of prosecutions and convictions remains low. In the first quarter of 2020, the Albanian authorities brought prosecutions in eleven cases relating to criminal networks and organised crime, and six individuals were convicted in the first instance. The police generally lack resources and receive low wages, and political influence over the police is reported to occur."

C. Swedish Migration Agency

41. Relevant parts of a report from the Swedish Migration Agency entitled "Country Information: Albania. Basis for assessment of countries of origin" (*Landinformation: Albanien. Underlag till bedömning av ursprungsländer*), dated 21 July 2023, read as follows (translated from Swedish by the Registry, footnotes omitted):

"Among other things, organised crime, blood feuds and gang crime are highlighted as specific problem areas by sources. These phenomena are said not to affect the public – murder and violence are kept within and between these networks.

...

Organised crime has had the marijuana trade as a strong driving force for the past 20-30 years. During this period, the marijuana trade has hampered democratic development by corrupting local leaders and involving the police and politicians. The police and politicians have a history of corrupt segments facilitating or even participating in criminal activities. In recent years, major police operations have been carried out to combat the production and trade of cannabis in the country. According to some sources, the efforts have been successful but have not come all the way in solving the problem.

...

The Albanian judicial system is in the midst of a major reform process. The aim of the reform process is ambitious and, in the long term, the measures can strengthen the integrity of the system as a whole and of individual judges and prosecutors.

In an update in March 2020, the European Commission presented its assessments of the status of reforms in Albania, including those related to the judicial system. The vetting process of prosecutors and judges is ongoing. At the time of the Commission's report, the vetting of just over a quarter of all the prosecutors and judges to be reviewed had been completed. Fewer than half had been approved. A majority had either been dismissed or had voluntarily resigned.

The new independent institutions which were to be established in accordance with previous constitutional amendments were operational at the time of the Commission's

update. The efforts to get the specialised bodies which were to fight corruption and organised crime operational had also progressed.

Despite the uncertainties that currently prevail given the ongoing reform process – it is still too early to draw any conclusions about the impact of the reforms – the prosecution and the judiciary in Albania are considered to be operational, although capacity and integrity problems hamper their efficiency and proper administration of justice. Both the judiciary and the prosecution are highly affected by political influence and corruption is widespread. The prevalence of corruption and political influence are serious integrity deficiencies that clearly need to be addressed in the reform process to move closer to EU accession. Capacity constraints are mainly the lack of continuity and resources. ...

...

As in the judiciary, a factor threatening the capacity within the police is the lack of continuity. Political influence is present and directors-general are replaced in line with political fluctuations. The police have resource constraints in terms of technical equipment and other logistics, but there is a relatively high police density in the country. Working conditions can be difficult for individual police officers who have low salaries, lack of overtime pay and tough working environments. Although a need for knowledge and professionalism remains in many respects, some sources have experienced a positive change in the skills and attitudes among the country's police officers in recent years. The police have worked to increase their accessibility, for example crimes can be reported directly and monitored by the reporter via a mobile application. Integrity deficiencies within the police include widespread corruption, political influence and reports of police abuse of individuals.

In summary, a functioning judicial system is in place in Albania. The police have sufficient capacity to meet the demands of the public. However, the civil right to have one's case tried fairly is not guaranteed due to the extensive capacity and integrity deficiencies within the judiciary and the prosecution. Situations where interests clash or friends get caught in the middle can affect employees within the justice system and a victim cannot always receive absolute protection from the police – however, this is not always related to deficiencies in capacity or integrity but can also be due to a lack of evidence of a perceived threat.”

D. United Kingdom Home Office

42. The United Kingdom Home Office report entitled “Country Policy and Information Note, Albania: Actors of Protection” dated December 2022 contains the following assessment concerning whether, in general, those with a well-founded fear of persecution or serious harm from non-State actors can seek effective state protection in Albania:

“2.3.1 In general, protection is available. The government has taken reasonable steps to prevent persecution by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution, which is accessible to people resident in Albania. However, decision makers need to consider each case on its facts, with the onus on the person to demonstrate why they would not be able to obtain protection.

...

2.3.4 Albania has a set of laws in place, including the penal code, to prevent and punish criminal acts and violations of fundamental rights (Legal rights).

2.3.5 The State Police are primarily responsible for internal security. The 2014 Law on State Police sets out the duties of the police, which include the protection of persons and the prevention of crime, and indicates the principles which the police must follow, including respect for human rights and non-discrimination. There are 260 police officers per 100,000 people (by contrast, there was an average of 225 police officers per 100,000 people in England and Wales in 2021). Challenges for the police include limited resources, corruption, and police impunity; the authorities are actively addressing these issues, with an increase in investigations and sanctions in 2021 and the vetting of high-level police officers (see Crime and punishment statistics, Police and Corruption).

2.3.6 While there are some reports of abuse, wrongdoing and inefficiency, this is not indicative of a police system which is unwilling or unable to offer protection. The government has introduced measures to combat corruption in the police, including vetting senior officers, while the Ministry of Interior's Service for Internal Affairs and Complaints investigated complaints of police abuse and corruption. Additionally, the Office of the Ombudsman monitors and reports on prisons and detention centres and investigates complaints from citizens (see Corruption, Human rights violations and Ombudsman – oversight of human rights violations).

2.3.7 The United States Department of State Overseas Security Advisory Council noted in 2021 that organised crime is a significant issue in terms of drug trafficking, human trafficking, prostitution, extortion, bribery and money laundering. However, the European Commission considered that the Specialised Structure for Anti-Corruption and Organised Crime is functioning and progress is being made in combating organised crime. The European Commission found that further progress was required in prosecuting those in positions of power and addressing human trafficking and money laundering, amongst other issues (see Organised crime and government action).

2.3.8 There is a functioning judicial system, with the European Commission assessing that good progress had been made in justice reform. Due process guarantees are appropriate, with the right to a fair and public trial without delay and the presumption of innocence until proven guilty, amongst others, and the government generally respects these rights. Free legal aid is available and the witness protection programme is functioning satisfactorily (see Judiciary and Witness protection).

2.3.9 The European Commission considered that there are challenges for the judicial system, including lengthy proceedings and a low clearance rate; however, progress is being made to accelerate the number of cases being heard and determined. Sources note there continues to be corruption within the system; however, the government continued to vet judges and prosecutors, dismissing those with unexplained wealth or links to organised crime. The European Commission reported that the ongoing judicial reforms are reducing political influence in the judicial system (see Judiciary and Corruption)."

E. Belgian Office of the Commissioner General for Refugees and Stateless persons

43. A report from the Belgian Office of the Commissioner General for Refugees and Stateless persons entitled "COI Focus, Albania, General situation" (*COI Focus, Albanië, Algemene situatie*), dated 15 December 2022

sets out, *inter alia*, the following in its summary (translated from Dutch by the Registry):

“Albania has been taking various initiatives against pervasive corruption for years and in a systematic manner. Among the most important initiatives, the creation of a special anti-corruption court (SPAK) should certainly be cited. The purpose of this new judicial institution is to investigate and try all corruption crimes committed by past and present decision-makers. Also to be mentioned here are the Whistleblowers Act and a number of successive intersectoral strategies against corruption. These initiatives do have an impact on the ground, but do not as yet adequately address high-level corruption.

Albania has also been taking initiatives against the presence of organised crime for many years. There are regular police operations to dismantle criminal organisations and to combat drug cultivation and trafficking. Several international (police) cooperation agreements have been concluded. There is also a witness protection programme. Nevertheless, Albanian crime groups remain among the most powerful in all of Europe. There is a criminal ecosystem in which criminal networks are connected to local mafia families and that focuses on drug and human trafficking. Criminals from this ecosystem often enter government service to ensure the development of their activities and they also have close ties to politicians and people in high positions. They are also well connected with officials in the police and judiciary. Organised crime can be responsible for serious crimes such as murder.

The Albanian government has effective and complete control over the security services. The operation of the police is strictly regulated by comprehensive and regularly updated legislation. There is a general consensus among the population that most officers do their utmost in difficult circumstances to ensure protection and security. Consequently, the police function adequately, respond quickly and in the interest of the citizen. Anyone who has complaints about the police can first contact the SIAC. Such complaints regularly lead to administrative sanctions or (to a lesser extent) to legal action. Citizens can also contact the Ombudsman Service with complaints about police officers or detention staff. Possible corruption or unprofessional behaviour among officers is countered by legislation and all kinds of practical initiatives (bodycams, one-stop shops, reporting apps, etc.). Police officers are also all currently being screened for their integrity and professionalism.

Albania has a functioning legal system exercised by courts of first instance, appellate courts and, above them, the Supreme Court, the ultimate appellate body. ... All common rights of a modern constitutional state are available. The government also respects these rights (generally speaking), although trials are not always conducted in public.

...

Since the fall of the dictatorship, the Albanian judiciary has long been associated with problems of endemic corruption, lack of integrity and accountability. To address this, the Albanian parliament approved a series of 46 constitutional amendments (“the justice reform package”) on July 22, 2016. The package of reforms not only provides for new judicial institutions (SPAK, NBI, HJC and the HPC) but also for the so-called Vetting Law. This law forms the basis for a thorough, internationally supervised vetting of all judges and magistrates. In 62% of cases, this vetting procedure has led to impeachment, dismissal or termination of office. Those who are dismissed are also prosecuted.”

F. United States Department of State

44. The United States Department of State's 2022 Country Report on Human Rights Practices in Albania includes the following information:

"Significant human rights issues included: problems with the independence and integrity of the judiciary; lack of independent media; and persistent corruption in government, law enforcement, and municipal institutions.

The Specialized Anticorruption Body and the justice system continued to make significant progress during the year investigating, prosecuting, and convicting senior officials and organized criminals who engaged in corruption. The government implemented e-services measures to improve transparency and reduce opportunities for corruption, and prosecutors made progress in confronting the country's long-standing culture of impunity.

...

Although the constitution provides for an independent judiciary, political pressure, intimidation, corruption, and limited resources prevented the judiciary from functioning fully, independently, and efficiently. ...

The government continued to implement an internationally monitored process to vet judges and prosecutors and dismiss those with unexplained wealth or ties to organized crime. ...

From January through September 20 the country's High Justice Inspector (HJI) received 580 new complaints, of which 95 percent were submitted by citizens. The HJI administered 19 disciplinary investigations, six initiated by the HJI and 13 based on a complaint. The HJI also submitted to the High Judicial Council one request for disciplinary proceedings against a judge.

...

The law provides criminal penalties for corruption by public officials and prohibits individuals with criminal convictions from serving as mayors, parliamentarians, or in government or state positions. The government generally implemented the law effectively. The judicial system, which is undergoing reforms supported by the United States and European Union, continued to make some progress in breaking the cycle of impunity.

... Corruption existed in all branches and levels of government, including through public procurement and public-private partnerships, though authorities made progress during the year in combatting corruption and ending impunity. In August, the Special Prosecution Against Corruption and Organized Crime (SPAK) secured the final conviction of former Minister of Interior Saimir Tahiri on charges of abuse of office, secured the final conviction of a judge and a prosecutor on charges of corruption, and sent to trial a corruption case against another prosecutor. Former Deputy Minister of Interior Rovena Voda was sentenced to 10 months in prison and former mayor Fatos Tushe was convicted to two years and four months for abuse of office. SPAK also investigated public-private contracts for waste incinerators in the cities of Tirana, Elbasan, and Fier, which allegedly illegally steered 29,036,925 ALL (\$271.5 million) to government officials and contractors. The investigation led to the arrests of a former Minister of Environment, Lefter Koka, in December 2021, and former member of parliament Alqi Bllako in March.

In October 2021, the government consolidated all preventative anti-corruption agencies into one Anti-Corruption Directorate under the Ministry of Justice. The agencies previously reported to the prime minister's office. The Anti-Corruption Directorate reported investigations resulted in 261 administrative measures against officials/employees and other criminal charges were referred for prosecution.

In April the Supreme Court rejected a request to suspend the prison sentence of former Prosecutor General Adriatik Llalla convicted on corruption-related charges in September 2021. Llalla was originally sentenced to two years of imprisonment and had four plots of land and one seaside apartment, worth 106,950,000 ALL (\$1 million), confiscated and transferred to the state's ownership.

The High Inspectorate for the Declaration of Assets and Conflict of Interest reported that through August it had referred six new cases for prosecution, involving one member of parliament, one prosecutor, three directors in the government agencies, and one administrator in a government company. Charges included refusing to declare assets, hiding assets, or falsifying asset declarations; money laundering; and tax evasion.

Police corruption remained a problem. Through August the Police Oversight Agency received 1,707 complaints or allegations of police corruption."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicants complained that their removal to Albania would be in breach of Article 3 of the Convention, which reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

46. The Government argued that the application should be declared inadmissible as manifestly ill-founded.

47. The applicants contested the Government's arguments.

48. The Court notes that the application 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' submissions

(a) The applicants

49. The applicants submitted that, upon return to Albania, they would risk being killed or exposed to serious assaults. This threat originated from criminal networks and was the result of the first applicant's work as a police officer. They had already been subjected to threats and attacks prior to leaving

Albania and further attacks, directed at their home, had taken place after they had left the country.

50. The applicants contended that the Albanian authorities were not able or willing to provide appropriate protection against this risk. They submitted that country of origin information demonstrated that organised crime was a severe problem in Albania; that there were serious flaws in the Albanian legal system; that corruption was widespread; and that the police often hesitated to get involved. They also emphasised that the Migration Court had found that it was not possible to establish that the protection offered by Albanian authorities reached such a level that it could generally be assumed to be effective. This general lack of adequate protection was, in the applicants' view, sufficient to establish that the Albanian authorities would fail to protect them.

51. Furthermore, the applicants argued that the Albanian authorities did not have the ability or willingness to protect them specifically. The applicants stated that they had turned to the Albanian law enforcement authorities after the first applicant had received threats in August 2017, after the attempted abduction of the third applicant in October 2017 and after the explosions in 2020. However, the Albanian authorities had not provided adequate protection.

52. Moreover, the applicants argued that the Swedish authorities had not performed a rigorous examination of the case and that there had been deficiencies in the proceedings. In particular, they had had insufficient time to present their claims during the asylum interviews and not all documents submitted by them had been properly translated. Additionally, they had initially not been granted public counsel, had been refused an oral hearing in the Migration Court and had been refused a re-examination despite having presented new circumstances.

(b) The Government

53. The Government submitted that, although the events in Albania cited by the applicants had not been questioned in the domestic proceedings, it had never been established who was behind the threat or the underlying reason for it. If it could be assumed that, upon return to Albania, the applicants would risk being subjected to the same kind of criminal acts, committed by individuals unknown to them, the question at hand would be whether they could obtain effective State protection.

54. The Government emphasised that the onus was on the applicants to demonstrate why they would not be able to seek and obtain State protection and highlighted that the Migration Court had concluded that the information in the case did not suffice to conclude that the Albanian authorities would lack the capacity and the will to act on a threat against the applicants.

55. Moreover, the Government submitted that while it was an undisputed fact that there were problems as regards the proper functioning of the

Albanian legal system, the relevant country of origin information did not support the conclusion that the Albanian authorities, in general, would be unable or unwilling to provide protection. The information available demonstrated that Albania had a largely functioning judicial system and was making a concerted effort to improve the country's law enforcement capabilities, although corruption and lack of resources within the police presented ongoing challenges. Thus, Albania had a criminal law system under which attacks by non-State actors were punishable and there was a reasonable ability and willingness to enforce the law.

56. The Government furthermore disputed the applicants' claims that there had been deficiencies in the domestic proceedings. The Government submitted that the applicants had had ample opportunity to argue their case and that the Swedish authorities and courts had made thorough assessments.

2. *The Court's assessment*

(a) **General principles**

57. The relevant general principles have been set out in *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, 23 March 2016) and *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 77-105, 23 August 2016) and, more recently, in *Khasanov and Rakhmanov v. Russia* ([GC], nos. 28492/15 and 49975/15, §§ 93-116, 29 April 2022). The Court, in particular, reiterates the following.

58. The removal of an alien by a Contracting State may give rise to an issue under Article 3 of the Convention, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would face a real risk of being subjected to treatment contrary to Article 3 in the destination country. In these circumstances, Article 3 implies an obligation not to remove the person in question to that country (see *F.G. v. Sweden*, § 111, and *Khasanov and Rakhmanov*, § 93, both cited above, with further references).

59. Owing to the absolute character of the right guaranteed, Article 3 of the Convention applies not only to the danger emanating from State authorities but also where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection (see *J.K. and Others v. Sweden*, cited above, § 80, with further references).

60. The assessment of the existence of a real risk must necessarily be a rigorous one. It is in principle for the applicant to adduce evidence capable of proving that there are substantial grounds for believing that, if the measure complained of were to be implemented, he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3; and where such evidence is adduced, it is for the Government to dispel any doubts about it

(see *F.G. v. Sweden*, §§ 113 and 120; *J.K. and Others v. Sweden*, § 91; and *Khasanov and Rakhmanov*, § 109, all cited above).

61. However, the general situation in the receiving State, including the ability of its authorities to provide protection, has to be established *proprio motu* by the competent domestic immigration authorities (see *J.K. and Others v. Sweden*, cited above, § 98).

62. In cases concerning the expulsion of asylum-seekers, the Court's main concern is whether effective guarantees exist that protect the applicant against arbitrary *refoulement* to the country from which he or she has fled. The primary responsibility for implementing and enforcing the guaranteed rights and freedoms is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. The Court must be satisfied, however, that the assessment made by the authorities of the Contracting State is adequate and sufficiently supported by domestic materials as well as by materials originating from other reliable and objective sources such as, for instance, other Contracting or third States, agencies of the United Nations and reputable non-governmental organisations (see *F.G. v. Sweden*, § 117, and *Khasanov and Rakhmanov*, §§ 102-03, both cited above, with further references).

63. If an applicant has not already been deported, the material point in time for the assessment must be that of the Court's consideration of the case (see *F.G. v. Sweden*, § 115, and *Khasanov and Rakhmanov*, § 106, both cited above, with further references). When carrying out the risk assessment, it is a firmly established principle that the Court may obtain relevant materials of its own motion (see *J.K. and Others v. Sweden*, § 90, and *Khasanov and Rakhmanov*, § 116, both cited above).

(b) Application of the principles to the present case

64. The applicants' claims regarding the risk of ill-treatment by non-State actors and the Albanian authorities' inability to provide appropriate protection were examined by the Swedish Migration Agency and Migration Court in two sets of proceedings. There are no indications that those proceedings lacked effective guarantees to protect the applicants against arbitrary *refoulement* or were otherwise flawed. In particular, the Court notes that the applicants were interviewed by the Migration Agency, with the assistance of an interpreter, and that from their first appeal onwards they were represented by legal counsel. While the Migration Court did not hold an oral hearing in the case, the applicants and their counsel nevertheless had ample opportunities to present their case orally and in writing during the proceedings as a whole. Moreover, both the Migration Agency and the Migration Court carefully examined the applicants' submissions and delivered decisions containing relevant reasons for their conclusion. While the assessment in the subsequent proceedings was more limited than in the ordinary asylum proceedings it cannot, in the light of the circumstances of

the case, be considered to have been too restrictive (compare, for example, *F.G. v. Sweden*, cited above, § 156; *A.M.A. v. the Netherlands*, no. 23048/19, § 78, 24 October 2023; and *M.D. and M.A. v. Belgium*, no. 58689/12, §§ 65-67, 19 January 2016).

65. Turning to the substance of the risk assessment, the Court at the outset observes that the domestic authorities, who are best placed to assess the facts (see, *inter alia*, *F.G. v. Sweden*, § 118, and *Khasanov and Rakhmanov*, § 105, both cited above), did not call into question that the threats and attacks cited by the applicants had occurred. The Court finds no reason to depart from that assessment.

66. The Court reiterates that the fact of past ill-treatment can provide a strong indication of a future, real risk of treatment contrary to Article 3 of the Convention (see *J.K. and Others v. Sweden*, cited above, § 102). Moreover, the Court observes that the Migration Court does not appear to have questioned the assertion that the applicants could be at risk of ill-treatment from non-State actors upon return, and both the Migration Agency's and the Migration Court's assessments focused mainly on the availability of State protection (see paragraphs 13-16, 20-21, 30 and 32 above). Furthermore, the Government did not explicitly dispute that the applicants, upon return, could be at risk of being subjected to the same kind of criminal acts as previously suffered.

67. Under these circumstances, the Court will proceed on the assumption that the applicants may face a real risk of ill-treatment from non-State actors upon return to Albania. The question is thus whether the Albanian authorities are able to obviate that risk by providing appropriate protection (see the case-law referred to in paragraph 59 above).

68. It is not in dispute that the type of acts to which the applicants have been subjected are criminalised under Albanian law. Moreover, the Court, having regard also to more recent reports (see paragraphs 39-44 above), sees no reason to depart from the Migration Court's finding (see paragraph 20 above) that it follows from available country information that Albania has a largely functioning judicial system.

69. The Court, however, recognises the challenges faced by the Albanian judicial system, which are described in the country information quoted above, and which were also noted by the Migration Agency and the Migration Court, as well as by the Government. In particular, the Court notes the reports of continuing problems relating to corruption and influence from criminal organisations. Essentially, from all the reports quoted above dating from 2021-2023 (see paragraphs 39-44 above), it appears that corruption continues to be a widespread problem in Albania and that further efforts are needed to address this. The report from the Belgian Office of the Commissioner General for Refugees and Stateless persons also specifically states that Albanian crime groups remain among the most powerful in all of Europe and that criminals from that ecosystem have ties to the police, judicial officials and other people

in high positions (see paragraph 43 above). The report from the Swedish Migration Agency further states that the police have a history of corrupt elements facilitating or even participating in criminal activities (see paragraph 41 above).

70. Nevertheless, the Court also recognises that Albania, a member of the Council of Europe and a Contracting State to the Convention, has made concerted efforts to address these issues. The reports quoted above describe several reforms which have been introduced and measures taken to improve the capability and integrity of the law enforcement authorities. The reports also note that, although some problems remain, progress has been made. For example, specialised bodies working against corruption and organised crime have been set up and are operational, vetting processes for judges and prosecutors are ongoing, regular police operations against criminal organisations are carried out and there are examples of investigations, arrests and convictions in cases relating to corruption and to organised crime (see, in particular, paragraphs 39 and 41-44 above).

71. In the light of these recent reports, which postdate the decisions in the domestic proceedings, the Court considers that the Albanian authorities' capacity to protect their people cannot be regarded as insufficient for the general public in Albania. Nor can it be regarded as generally insufficient for all persons who are targeted by criminal organisations (compare *J.K. and Others v. Sweden*, cited above, § 121).

72. Turning to the particular circumstances of the applicants' case, the Court observes that during their asylum interviews the applicants stated that they had not reported the attacks against them to the Albanian law enforcement authorities, but that the first applicant had had direct contact with a senior police officer (see paragraph 7 above). The applicants subsequently submitted documents to the Migration Agency which showed that some form of report had been made concerning the attempted kidnapping of the third applicant in October 2017, and that the first applicant had reported another incident where he had been threatened, which preceded the attempted kidnapping and had not been mentioned during the asylum interviews (see paragraph 9 above). Moreover, in their appeal to the Migration Court the applicants stated that the first applicant had had contact with both senior police officials and officials within the prosecutor's office in Albania (see paragraph 17 above). The Migration Court also found that the first applicant had had considerable contact with the police and prosecutors regarding the incidents to which the family had been exposed (see paragraph 21 above).

73. Taking the above into consideration, the Court finds that the applicants have demonstrated that they had reported the threats against the first applicant and the attempted kidnapping of the third applicant to the Albanian law enforcement authorities. There is, however, no indication that the applicants had reported the incidents where shots had been fired at their door and a hand grenade had exploded near their home. Moreover, the

applicants did not provide any precise information about when those two incidents had occurred. Thus, it is unclear whether they took place before or after the attempted kidnapping and therefore it is unclear whether there were any attacks at all against the applicants during the year or so that they remained in their home in Albania after the attempted kidnapping.

74. As to the two explosions in 2020, the applicants provided documents showing that they had reported these incidents to the police. This was also accepted by the Migration Agency and the Migration Court (see paragraphs 30 and 33 above). The Court finds no reason to depart from that assessment.

75. The Court furthermore finds that the documents submitted indicate that the Albanian authorities took note of the applicants' reports and acted on them, at least by taking certain investigative measures and issuing documents. However, no information has been submitted by the applicants concerning the progress of the investigations, any measures taken by the Albanian authorities or a failure to take relevant measures. Furthermore, there is no indication that the applicants complained to any higher authority in Albania about any lack of action by the police. The Court thus finds that the evidence does not show that the Albanian authorities failed to take the reports seriously or refused to act on them.

76. The Court moreover observes that any failure by the police to arrest or identify any assailants is not necessarily indicative of a lack of willingness on the part of the Albanian authorities. It may be due to a lack of evidence. In this regard, the Court notes that the applicants, though convinced that the threats and attacks originated from criminal networks on account of the first applicant's work as a police officer, had not been able to identify anyone in relation to these crimes.

77. Furthermore, the applicants' submission that reporting the crimes to the Albanian authorities would aggravate the situation has not been substantiated. There is no indication of an escalation following the reporting of the attempted kidnapping or the reports regarding the explosions in 2020. As stated above (see paragraph 73), it is unclear whether there were any further incidents at all between October 2017, when the attempted kidnapping took place, and December 2018, when the applicants left Albania. Nor has it been claimed that there have been any more incidents since July 2020, which was almost four years ago.

78. Having regard to all of the above, the Court considers that there are no reasons to depart from the domestic authorities' assessment that it has not been demonstrated that the Albanian authorities are unable or unwilling to obviate any risk of ill-treatment by non-State actors seemingly faced by the applicants by providing appropriate protection.

79. The foregoing considerations are sufficient to enable the Court to conclude that the applicants' removal would not be in violation of Article 3 of the Convention.

II. RULE 39 OF THE RULES OF COURT

80. The Court reiterates that, in accordance with Article 44 § 2 of the Convention, the present judgment will not become final until (a) the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if referral of the case to the Grand Chamber has not been requested; or (c) the Panel of the Grand Chamber rejects any request to refer under Article 43 of the Convention.

81. It considers that the indication made to the Government under Rule 39 of the Rules of Court should remain in force until the present judgment becomes final or until the Court takes a further decision in this connection (see operative part).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that the applicants' removal would not be in violation of Article 3 of the Convention;
3. *Decides* to continue to indicate to the Government under Rule 39 of the Rules of Court that it is desirable in the interests of the proper conduct of the proceedings not to expel the applicants until such time as the present judgment becomes final or until further notice.

Done in English, and notified in writing on 7 May 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Marko Bošnjak
President

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	A. D.	1977	Albanian	Stockholm
2.	M. D.	1984	Albanian	Stockholm
3.	M. D.	2004	Albanian	Stockholm
4.	A. D.	2007	Albanian	Stockholm
5.	E. D.	2009	Albanian	Stockholm