



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

THIRD SECTION

CASE OF Y AND OTHERS v. SWITZERLAND

(Application no. 9577/21)

JUDGMENT

Art 2 and Art 3 (procedural) • Expulsion • Removal of applicants to Albania would not entail a breach • Presumption of Albania being a safe country sufficiently supported by an appropriate assessment of the applicants' individual situation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

22 October 2024

FINAL

22/01/2025

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

In the case of Y and Others v. Switzerland,

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

Pere Pastor Vilanova, *President*,

Jolien Schukking,

Peeter Roosma,

Ioannis Ktistakis,

Andreas Zünd,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 9577/21) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by seven Albanian nationals, Mr Y and others (“the applicants”), on 15 February 2021;

the decision to give notice to the Swiss Government (“the Government”) of the complaints under Articles 2, 3 and 13 of the Convention;

the decision not to give notice of the present application to the Albanian Government, having regard to the Court’s findings in *I v. Sweden* (no. 61204/09, 5 September 2013);

the decision not to have the applicants’ names disclosed;

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

the decision to indicate an interim measure to the Government under Rule 39 of the Rules of Court;

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by the AIRE Centre, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 1 October 2024,

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

INTRODUCTION

1. This application concerns the Swiss authorities’ rejection of the applicants’ asylum claims. The applicants claimed that their removal to Albania would put their lives at risks because of the first applicant’s professional activities.

THE FACTS

2. The applicants currently live in Switzerland. They were granted legal aid and were represented by Ms S. Motz, a lawyer practising in Zürich.

3. The Government were represented by their Agent, Mr A. Chablais, and subsequently by his successor Mr A. Scheidegger, of the Federal Office of Justice.

I. BACKGROUND AND THE INITIAL ASYLUM CLAIM

4. The applicants are a family of seven: the father (the first applicant), the mother (the second applicant) and their five children (the third to seventh applicants). On 26 November 2019 they applied for asylum in Switzerland.

5. While their asylum claims were being considered, the applicants benefited from free legal representation and the assistance of a lawyer, as does any person placed in a federal centre for asylum-seekers. The State Secretariat for Migration (“the SEM”) summarily heard the first applicant, the second applicant and their eldest daughter (the third applicant) on 3 December 2019. On 14 January 2020 the second and third applicants were heard again, in an interview about the reasons for their asylum claim conducted under Article 29 of the Federal Asylum Act of 26 June 1998 (“LAsi”, RS 142.31, paragraph 43 below). The first applicant was interviewed further about his asylum claim on 15 January and 18 February 2020.

6. During the interviews, the first applicant stated that he was a writer and a professor of Albanian literature and that since 2011 he had been the director of the Institute for the Study of Communist Crimes and their Consequences (*Instituti i Studimeve për Krimet dhe Pasojat e Komunizmit*, “the ICCC”), an organisation based in Tirana that conducts research into criminal acts committed under the communist regime in Albania and the perpetrators of those acts. The organisation is publicly funded and was granted the status of a “central and independent public institute” by the Albanian Parliament in 2010. The first applicant stated that, as the director of the ICCC, he had carried out research into persons who had committed acts of persecution during the communist regime, some of whom still held important positions in Albanian state institutions.

7. The first applicant stated in particular the following: at the beginning of 2019 he had lodged a criminal complaint in Germany against E.C., a former commander of the Qafë Bari prison camp who had been granted asylum in Germany. On 16 March 2019, H.B., a key witness in the case, was killed in Tirana. A person had presented himself to the police shortly after, confessing to H.B.’s murder in connection with a debt he had owed the victim. However, the first applicant had disputed that story. The first applicant spoke to the media, stating that the motive for the killing had not been clarified and that the instigators of the murder had still not been identified, and suggesting that the killing was linked to the allegations against E.C.

8. The first applicant also said that at the end of February 2019 he had sent the ICCC's activity report for 2018 to the Albanian Parliament, and that a chapter of that document was devoted to a discussion of former officers of the *Sigurimi*, the political police and intelligence service of the former communist government, who were still operating within Albania's state institutions.

9. The first applicant's statements asserted that his work for the ICCC had given rise to numerous media articles in which accusations and threats were made against him, including by powerful political figures. In particular, a large part of his interview with the SEM of 15 January 2020 was devoted to articles and cartoons about him that had appeared in the newspapers *Dita* and *Panorama*. The first applicant stressed that the articles published in *Panorama* had been counterbalanced by his own responses to the accusations or by articles written by others. The 19 April 2019 edition had contained an article in which S.V., a former vice-president of the Parliament, accused the first applicant of being a Russian spy, and also the first applicant's response entitled "[The first applicant] responds to [S.V.]". The coverage in *Dita* was not balanced. For example, an article of 29 April 2019 took the form of an open letter to the first applicant and was entitled "Letter to a Fascist". Yet another article, of 7 June 2019 referred to "[the first applicant's] neonaziism". As another example, an Albanian poet and former officer at the Communist military academy, A.D., publicly accused him of being an Islamist terrorist.

10. The first applicant explained that in July 2019 S.B. and other Socialist Party parliamentarians had submitted a draft bill which, if passed, would have hindered the work of the ICCC, and that they had also called for his dismissal as its director. The draft bill was subsequently withdrawn. In April 2019 S.B. had publicly alleged that the first applicant had tried to manipulate the work of Parliament and he produced a document to prove that, in response to which the first applicant was able to obtain the original document from the office of the President of Albania to counter that argument. Also in April 2019, the first applicant had filed a defamation complaint against S.B. and four other politicians and complaints against the newspaper *Dita* about slanderous public attacks on him, but the proceedings were dismissed in February 2020, apparently for procedural reasons. In the interview of 18 February 2020 the first applicant explained that he had addressed the procedural issues and the proceedings would be reopened. He also maintained that he had spoken to G.R., the then President of the Albanian Parliament, but that G.R. had not wanted to listen to him. The first applicant also stated that on 10 June 2019 he had lodged a criminal complaint with the Albanian public prosecutor's office against E.C. for crimes against humanity, which was discontinued in January 2020. The first applicant stated that the head of the prosecutor's office responsible for that case was A.K., who had been a judge under the communist regime and whom the first applicant had publicly denounced as such.

11. The attacks on the first applicant had intensified in the autumn of 2019. In September 2019 the first applicant received death threats to himself and his family, in particular on his Facebook account but also on his mobile telephone and by email. Similar threats were received by his lawyer. On 26 October 2019 *Panorama* published an article by the first applicant in which he condemned the death threats he had received and called for a reaction from the public authorities. On 22 November 2019 the same newspaper published another article calling on the authorities to ensure that the first applicant could safely continue his work.

12. With regard to the last few weeks that the applicants had spent in Albania and the events that had led them to leave the country, the first applicant told the SEM officer during his interviews that late on 31 October 2019, the night of Halloween, two masked strangers had tried to break into the family flat, smashing a lamp in the entrance hall with a pistol. He explained that the assailants had fled when he had made a noise and turned on the light in the flat. Then, on 20 November 2019, as he was queuing at an ATM in the street, an unknown man had approached him and told him that he could see his jacket under his coat, as “they had laser rays that could scan not only clothes but also inside human bodies”. The man had then told him that he knew when and where he had bought his “nice jacket” and added that there was a hole missing in his jacket, which the first applicant believed referred to the impact of a bullet. The first applicant did not complain to the authorities about these incidents, as he thought that would be useless.

13. On 25 November 2019 the family travelled to Kosovo, from where they flew to Switzerland. In December 2019 the first applicant resigned from his post as head of the ICCC, and his former deputy was appointed in his place. When he was asked why he had done this, the first applicant explained that his successor had not been subjected to similar personal attacks.

14. Lastly, the first applicant stated that after the news of his departure had been made public S.B., a Member of Parliament, had published an article threatening to find him in whatever country he had applied for asylum in. On 5 December 2020 a former Albanian Defence Minister had stated that pressure would be put on the Swiss Embassy in Albania and the Albanian Embassy in Switzerland with a view to ensuring that Switzerland did not give the applicants asylum. The first applicant’s lawyer had then lodged insult and defamation complaints in Albania on 5 December 2019. The first applicant further stated that in December 2019, O.M., a former Albanian Minister of Commerce during the communist era, had made threats against him on Facebook which were subsequently deleted and in which O.M. had said that the first applicant would be shot in the head. At about the same time, after the first applicant had left Albania, the Prime Minister had publicly denied that there had been any conspiracy against the first applicant, and the President of Albania stated that it was a shame that an intellectual like the first applicant had left the country.

15. In response to the SEM officer's question as to why he had made his asylum claim public, the first applicant explained that on 6 December 2019 he had given an interview to the *Voice of America* Albanian service that was then broadcast by the media, making public his departure from the country and the reasons for it. However, he had been careful not to mention the country in which he had sought asylum. The fact that he had left the country was already generally known by then.

16. The first applicant also mentioned, on several occasions, the impact of the persecution on his emotional and mental state, and in particular his loss of sleep. He did not seek medical help in this respect.

17. The second applicant generally confirmed the first applicant's account, particularly in her interview on 14 January 2020. Although she and the children had not encountered any personal difficulties in Albania that she ascribed to their family links to the first applicant, she feared for the children's safety. The second applicant referred in particular to the first applicant's frequent absences and the pressure of the rising stress he had experienced in the course of 2019 which, in turn, had had repercussions for their family life.

18. The first and second applicants provided their passports and those of their children, as well as their identity cards, for the purposes of their asylum claim. They also provided ten editions of the Albanian newspapers *Dita* and *Panorama* which contained passages relating to the first applicant; a USB stick containing recordings of statements made by the first applicant in the Albanian media before his departure; electronic documents on the activities of the ICCC and on acts allegedly committed by S.B., an Albanian politician and parliamentarian, under the communist regime; screenshots of threatening comments made on Facebook; two press articles; a decision not to examine the merits of the complaint lodged on 10 June 2019; a complaint dated 12 November 2019 concerning threats received via social networks; an insult and defamation complaint dated 5 December 2019; a decision of 3 February 2020 not to examine the merits of the complaint against S.P., four other persons and *Dita*; and three letters of support, one from an association of victims of communism and the other two from private individuals living in Switzerland and the Netherlands.

19. At her asylum interview on 14 January 2020, the second applicant presented numerous further documents. The SEM officer informed her that she should keep some of them so that her husband could explain their relevance during his interview. At the end of his interview on 15 January 2020 the first applicant presented a USB stick containing extracts from media reports, links to YouTube videos containing the first applicant's interviews and an audio-recording of the first applicant himself explaining: "Why I am being threatened". The SEM interviewer asked whether any judicial or other official documents were available as there were none on the USB, and the first applicant said that he would try to extract some such documents from his

personal e-mail boxes. He was also informed that his wife had attempted to provide further files of media publications, but that they were not essential and that he should concentrate on providing documents “that would be important and relevant to his asylum claim, that would prove his actual fears about being in Albania” and that would “relate to the most recent events and the problems he had faced in 2019”.

20. During the first applicant’s interview on 18 February 2020, the SEM officer accepted some further documents presented by him, but then told him that the SEM would not examine all the documents that he and his wife had brought unless they were judicial decisions, and that the first applicant should just hand over the documents that he considered most important. The SEM officer said that there was no need to go back over the issues they had previously discussed. The officer advised the first applicant that if he wished to provide other important documents during the proceedings he should do so through his legal representative.

21. At the end of the interview of 18 February 2020, the first applicant’s legal representative asked the SEM to take a decision “in accelerated procedure”, given the first applicant’s psychological condition, and on the basis that the facts had been sufficiently established. The first applicant stressed that he had provided everything he considered essential to his asylum claim and had nothing to add to the facts as outlined in the record of the interview.

22. At the end of each interview, the first and second applicants signed their respective interview records, confirming that they had been translated for them and that the content was correct. Their legal representative also signed the records.

23. In an interim decision of 25 February 2020, the SEM informed the applicants’ legal representative that the applicants’ asylum claims, especially the documents provided, needed further examination, and that they would therefore be processed using the extended procedure under Article 26d of the LAsi (see paragraphs 43 and 45 below). The following day, the first applicant’s legal representative informed the SEM that he was no longer acting for the applicants and that they had now been assigned to a canton. As the applicants had left the federal centre for asylum-seekers to be accommodated by the canton, on 9 March 2020 they instructed a lawyer from the legal advice office responsible for providing free assistance to people going through the extended procedure in that canton (“*Service d’Aide Juridique aux Exilé/e/s*”, the SAJE), under Article 102 LAsi. They maintained regular contact with that lawyer throughout 2020, checking for news from the SEM and informing him of their situation and change of address.

24. On 10 March 2020 the lawyer filed the applicants’ letter of authority to act with the SEM. He did not ask anyone to carry out additional research or investigation or to set a new date for the filing of evidence: he merely stated

that the applicants were expecting to be informed of the outcome of the process. On 18 September 2020 he sent a single additional piece of evidence to the SEM – a letter of support from a private person residing in the Netherlands.

II. THE DECISION ON THE APPLICANTS' ASYLUM CLAIMS AND THE APPEAL PROCEEDINGS

25. On 12 October 2020 the SEM issued a thirteen-page decision rejecting the applicants' asylum claims and directing their removal from Switzerland.

26. It went over the factual allegations made in support of the family's asylum claim. In particular, it stated that the killing of H.B. was linked to a dispute over a private debt, whereas the first applicant had disputed that story. It then stated that in 2019 a number of articles had appeared in *Dita*, especially those by S.B., a politician. The first applicant had been able to obtain documents to support his cause from the Office of the President of Albania and had launched a criminal complaint against S.B., *Dita* and others; that complaint had not been dealt with. The decision then noted that the criminal complaint of crimes against humanity made by the applicant against E.C. in Albania had also not been dealt with, allegedly because the person who had passed the vetting procedure and been appointed as the Special prosecutor had been a judge in the communist era. In July 2019 the draft of a proposed law modifying the ICCC statute had been submitted to the Albanian Parliament by S.B. and other members. In September 2019 the campaign against the first applicant had intensified, and he and his lawyer had received threats on their phones and on social media. Complaints about those threats had subsequently been dismissed. On 31 October 2019 two armed persons had tried to break into the family flat but had been scared off by the first applicant putting on the light and had left. Shortly after that two persons had spoken to the first applicant in the street and made remarks about his jacket "missing a hole". In December 2019, while already in Switzerland, the first applicant had resigned from his position as director of the ICCC and his former deputy had taken up the post; the former deputy had not been subjected to any attacks. While in Switzerland, the first applicant gave an interview to Albanian television. The decision set out the second applicant's statements in some detail, as well as the documentary evidence submitted by the applicants in support of their claims.

27. Moving on to evaluate the asylum claim, the SEM considered that if the work of the first applicant had really annoyed the authorities, they had had the means to stop that work, or even to dissolve the ICCC. It considered that the attacks perpetrated by persons holding positions within State institutions had been individual initiatives and did not emanate in any way from the Albanian State, adding that the fact that the complaints lodged by the first applicant had been dismissed did not suggest that the current

authorities had intended to harm him for reasons connected with his work. It remarked that many of the first applicant's conclusions about the involvement of State officials in the attacks on him had been no more than his personal conjecture, unsupported by objective evidence. For example, in relation to the two latest episodes, those of 31 October and 20 November 2019, it remarked that "no State could guarantee total security 24/24 hours" and that "nothing suggested that if complaints were to have been lodged in this respect they would not have been appropriately dealt with". In that connection, it observed that, assuming that the first applicant really was being targeted by the authorities or by third parties, it was incomprehensible that he had not been the subject of attacks before leaving the country. It observed that after S.P.'s allegations of manipulations in the Parliament, the first applicant had received support from the President's Office in April 2019, when he had obtained a document disproving S.P.'s allegations.

Furthermore, the SEM found it "surprising" that the first applicant had given a public interview on 6 December 2019 disclosing the fact that he had left the country, even if he had not named the country where he was seeking asylum, while claiming that he and his family were in danger and could be targeted even while abroad. The SEM considered that the fact that criminal complaints lodged by the first applicant about insults and threats had been dismissed did not indicate that the Albanian authorities had intended to harm or persecute him on account of his political views. The Albanian authorities were both willing and able to protect the general population from third parties. The decision referred to the first applicant's reported medical problems (insomnia, hypertension) that were not being monitored or treated and which did not prevent his return to Albania. Lastly, the decision addressed the children's situation and found that there were no obstacles to their return to Albania, either. It also observed that on 6 March 2009 the Federal Council had designated Albania as a "safe country of origin" within the meaning of Article 6a(2)(a) of the LAsi (see paragraphs 43 and 44 below), and that the applicants had failed to rebut the presumption that the first applicant was not being persecuted there.

28. To sum up, the applicants' situation did not reach the threshold specified in Article 3 LAsi that would justify granting asylum and there were no obstacles to returning them to Albania. The decision ended with the information that an appeal could be lodged within five working days, under Article 108 LAsi.

29. On 15 October 2020 the applicants' representative lodged an appeal against that decision with the Federal Administrative Court ("the TAF") without informing the applicants of the decision in question and without having consulted them on the appeal. He did not produce any additional documents in support of the appeal. The grounds for the appeal were matters already present in the file and the SEM was not asked to take any additional investigative measures or to give an extension of time for the applicants to

make additional submissions. On 3 November 2020 the applicants informed their representative of their intention to supplement the file with other documents, including in particular articles that the first applicant had written in Switzerland about other Albanian political figures who, according to him, had worked for the communist regime in the past. They forwarded a file with translations of these additional documents, which were press articles, to their legal representative on 15 December 2020. However, it is apparent from the documents submitted to the Court that their legal representative subsequently confirmed that he did not forward those documents to the TAF before it delivered its judgment.

30. The TAF, as the final court in this case, dispensed with the exchange of written submissions provided for in Article 111a paragraph 1 LAsi and delivered its judgment on 29 December 2020. The judgment was forwarded the following day to the applicants' legal representative's address. The TAF rejected the applicants' appeal. It stated first of all that Albania was presumed to be a safe country in which there was no State persecution that would justify a grant of asylum and that the Albanian State was in a position to offer its nationals effective and efficient protection against persecution by third parties (non-state actors). It then examined whether the grounds for the asylum claim and the arguments put forward by the applicants were such as to rebut this presumption or to prove the contrary.

31. The TAF observed first of all that the ICCC had been created and was financed by the Albanian State and not by some opposition group. In this context, it acknowledged that the first applicant's activities, that is, his research into criminal activities during the communist era, his public appearances in the press, on television and on social networks, and his role in bringing criminal proceedings against the former director of a prison had "certainly caused displeasure in some circles, in particular where he had denounced the past activities of those persons, or of their close relatives, in support of the former communist regime". However, the TAF considered that the research undertaken by the first applicant and the ICCC "did not relate to recent events, but to acts committed at the time of the former communist regime, which had ceased to exist three decades ago, and that the current government, led by the Socialist Party, had been at the helm of the country for years". After analysing various matters that the first applicant had talked about during the interviews, the TAF concluded that it could not be assumed that the problems that the first applicant had faced in 2019 were the fault of the current Albanian authorities. On that point, it observed that, on the contrary, the first applicant had submitted the ICCC's activity report for the previous year to the Albanian Parliament in February 2019 without subsequently encountering any problems.

32. The TAF then concluded that the first applicant's imputation of the death threats published against him on Facebook to the police was unsubstantiated. It found it equally doubtful that the authorities had been

involved in the attempted break-in at the applicants' home on the night of Halloween in 2019, finding that the facts more probably suggested that the event was akin to a burglary, as the intruders had been scared by the light and noise and had immediately run away so as not to be identified. The TAF stressed that the first applicant had never been physically attacked nor had any legal procedure been started against him, although the authorities had obviously had opportunities to do so. All in all, the TAF concluded that even if the first applicant had lived for several years in an environment of hostility and polemic, and the events immediately preceding the departure could have caused a subjective sense of fear, the circumstances were far from constituting "intolerable psychological pressure". Nor, it held, was there any reason to believe that the Albanian authorities had been involved in the threats made by an unknown person on 20 November 2019. Nothing indicated that the first applicant had revealed or disclosed any particularly sensitive information in 2019, and, in view of the time that had elapsed since the first threats had been received from third parties in 2017, there had been ample opportunity for them to attack the first applicant violently before he left the country in November 2019 if they had really wanted to do so.

33. The TAF characterised the verbal attacks of 2019 on the first applicant, especially the publications in *Dita*, to be "particularly sharp and unpleasant". It observed nevertheless that the applicant had been defended by articles in *Panorama* – which was, in his own words, one of the most reputable journals of the country – and which had equally used harsh terms in relation to his opponents. In this context, the TAF observed that while Albanian political life was generally characterised by a high degree of verbal violence, including exchanges of insults and threats between the opponents, after an institutional crisis in 2019 the attitudes of the various political players had become more cooperative and conciliatory. The first applicant was a public figure and could be expected to be more tolerant of hostility towards his own activities or those of the ICC. Attacks from people who occupied or had previously occupied a position within State institutions before or after the fall of the communist government – such as, for example, the MP S.B. and the former Albanian Defence Minister – were "individual initiatives, for which only the perpetrators were responsible". As for the activity of the police and the judiciary, the TAF considered that first applicant's high profile meant that a certain amount of caution had to be exercised with regard to his situation but found that it could be assumed that the Albanian authorities had been and remained in a position to provide him with adequate protection. It referred to the improvements in the organisation of the police and judiciary, which had also been observed by the EU. It did not find that the dismissal of the first applicant's complaints had indicated any intention to harm him or to deny him judicial protection: the rejections had been for procedural or other legitimate reasons. As to the "principal" complaint lodged by the first applicant against the MP S.P. and other persons and *Dita*, it had not been

dismissed hastily but after a number of preliminary examinations and adjournments over a period of seven months. It also noted the support for the first applicant expressed by the highest authorities, including the President.

34. Lastly, turning to the applicants' current situation, the TAF found that the tensions of 2019 had largely subsided. Given the time that had passed since those events and the change in the first applicant's status, it appeared unlikely that he was at risk of treatment in breach of Article 3. In any case, he could seek protection from the relevant authorities in Albania. The TAF found that, given the absence of additional information in this respect, there were no pertinent reasons to find valid grounds for granting asylum arising after the applicants' departure from Albania.

35. The TAF then considered whether there were any other reasons that would prevent the applicants' expulsion from Switzerland, and concluded that the enforcement of the applicants' removal would be lawful under Article 3 of the Convention or under LAsi.

III. REVISION REQUESTS

36. On 10 November 2021 the applicants sought revision of the SEM decision of 12 October 2020 and the TAF decision of 29 December 2020 (no copy of their application has been submitted to the Court).

37. On 3 February 2022 a single judge of the TAF declared the application for revision ("*demande de révision*") inadmissible. It found, first, that in so far as the applicants relied on the evidence obtained after the TAF decision of 29 December 2020 but concerning the facts that preceeded that decision, they should have made a request for re-examination ("*une demande de réexamen*") and not revision. In so far as the application sought revision, the TAF reiterated that that was possible only on strict conditions, notably if subsequently to the decision concerned the applicant discovered relevant facts or conclusive evidence which, through no fault of his own, he was unable to adduce in the previous proceedings, with the exception of facts or evidence subsequent to the judgment. It noted the following additional evidence submitted by the applicants in support of their application: a list of Albanian nationals who had been recently granted asylum in various countries, including Switzerland; additional information related to the threats to the first applicant made in 2019 by politicians and public figures; quotations from publications in the media and on internet platforms; extracts from international and national NGO reports concerning the human rights situation in Albania; and copies of press articles. The TAF took note of the applicants' explanations that while most of these documents preceded its decision of 29 December 2020, their legal representative had not filed them as he should have done. However, the TAF found no valid reason for the delay in filing those documents or for the lateness of the application for revision, which had been made after the statutory time-limit of 90 days from

when the applicants had learnt of the relevant circumstances. The TAF then reiterated that while it was “possible to obtain a revision of a decision refusing refugee status and ordering the execution of a removal decision that was then in force, despite the late filing of new evidence, if that new evidence confirmed that there was a risk of persecution or inhuman treatment that would make the implementation of the removal order contrary to international public law”, in this case that was “manifestly not the situation”. The TAF found that the applicants’ allegations about the first applicant’s high profile and about the inability and unwillingness of the Albanian State to protect them had already been duly examined and decided, and it declared the application for revision inadmissible.

38. Lastly, on 21 March 2022 the SEM considered the application of 10 November 2021 and declared the applicants’ applications for re-examination of their asylum claims inadmissible. It summarised the applicant’s application as follows:

“In your ‘multiple application/request for re-examination’ of 10 November 2021, supported by your letter of 7 February 2022, you go back over the grounds put forward in support of your asylum claim of 12 October 2020 before stating that you have lodged a complaint with the ECtHR and an application for revision with the TAF. ... In this context, you state that you will continue to publish, from Switzerland, information about Albanian political figures involved in crimes committed under the Communist dictatorship.”

The SEM noted, in particular, the following evidence submitted by the applicants in support of their application: the file submitted to this Court and the information provided by the Swiss Government in relation to those proceedings; letters in support of the first applicant written in 2021; six press articles written by the first applicant in 2020-2021; information about the criminal proceedings in Germany concerning E.C.; and letters from lawyers involved in these proceedings, indicating in particular their understanding that the first applicant would be in danger if returned to Albania.

Observing that there had been some procedural irregularities, the SEM agreed, exceptionally, to consider the application as one for “qualified review” (*“une demande de reexamen qualifiée”*). It noted that the time-limit for filing the application and additional information was thirty days from when an applicant had knowledge of the facts on which the application was based. It found that all the evidence filed by the applicants dated back to 2020 and early 2021, and that the application was therefore out of time.

39. However, the SEM also noted, as had the TAF, that late applications could be admitted if the evidence clearly indicated a risk of persecution or inhuman treatment if the applicants were to be removed. It found no such indication in the present case. In particular, the SEM found that the first applicant’s publications and the statements in his support concerned his profile and the alleged inability of the Albanian State to protect him if he were returned. Those allegations had already been considered and rejected by the

SEM and the TAF. Letters written by lawyers in the context of the criminal proceedings against E.C. in Germany did not add any new or relevant information that could change the outcome of the previous decisions of the SEM and TAF. Lastly, it decided that any further appeal would have no reasonable prospect of success and would have no suspensive effect, that the first applicant should not be given legal aid and that he should bear the legal costs of the application for re-examination (500 Swiss francs (CHF)).

IV. ADDITIONAL INFORMATION

40. On 15 February 2021 the Court granted a request by the applicants for the application of interim measures under Rule 39 of the Rules of Court and indicated to the Government that the applicants should not be removed from Switzerland for the duration of the proceedings before the Court.

41. On 18 July 2022 a prosecutor in Switzerland granted a request from the Munich Prosecutor's office for international mutual assistance in questioning the first applicant as a witness in connection with the criminal proceedings brought against E.C. in Germany. The first applicant was questioned in Switzerland in October 2022. He testified as a former director of the ICC.

42. The first applicant continued to publicly engage in a campaign of denunciation of the former officers of the communist regime. He submitted extracts of interviews he had given to various Albanian media outlets, in particular those of October 2022. He particularly criticised the new legislation setting limits to the disclosure of former *Segurimi* files and named certain persons who had occupied important positions under the communist regime, calling for them to be cleansed from the State apparatus. The first applicant said that he was currently "involved in negotiations with international actors to continue pursuing efforts to hold people accountable for the atrocities committed during the Communist regime".

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

43. The Federal Law on Asylum of 26 June 1998 (LASi; RS 142.31) provides as follows in the relevant provisions:

Article 3: Definition of the term refugee

"1. Refugees are persons who in their native country or in their country of last residence are subject to serious disadvantages or have a well-founded fear of being exposed to such disadvantages for reasons of race, religion, nationality, membership of a particular social group or due to their political opinions.

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2. Serious disadvantages include a threat to life, physical integrity or freedom as well as measures that exert intolerable psychological pressure. Motives for seeking asylum specific to women must be taken into account.

...

4. Persons who claim grounds based on their conduct following their departure that are neither an expression nor a continuation of a conviction already held in their native country or country of origin are not refugees. The provisions of the Convention of Refugee Convention are reserved.”

Article 6a: Competent authority

“1. SEM decides on granting or refusing to grant asylum as well as on removal from Switzerland.

2. The Federal Council shall identify states in addition to the EU/EFTA states in which on the basis of its findings:

- a. there is protection against persecution, as a safe native country or country of origin;
- b. there is efficient protection against refoulement as defined in Article 5 paragraph 1, as a safe third country ...”

Article 7: Proof of refugee status

“1. Any person who applies for asylum must prove or at least credibly demonstrate their refugee status.

2. Refugee status is credibly demonstrated if the authority regards it as proven on the balance of probabilities.

3. Cases are not credible in particular if they are unfounded in essential points or are inherently contradictory, do not correspond to the facts or are substantially based on forged or falsified evidence.

...”

Article 26d: Extended procedure

“If it is clear after the interview on the grounds for asylum that a decision cannot be made under the accelerated procedure, namely because further investigation is required, the asylum seeker shall be assigned to the extended procedure and be allocated to a canton under Article 27.”

Article 29: Interview on the grounds for asylum

“1. SEM shall interview asylum seekers on their grounds for asylum; the interview shall take place in a federal centre.

1bis If necessary, it shall call in an interpreter.

...

3. Minutes shall be taken of the interview. They shall be signed by those participating in the interview.”

Article 40: Rejection without further investigations

“1. If, as a result of the interview, it is obvious that asylum seekers are unable to prove or credibly demonstrate their refugee status and there are no grounds preventing their removal, the application shall be rejected without further investigations.

2. The decision must at least be summarily substantiated.”

Article 102h: Legal representation

“1. Each asylum seeker shall be assigned a legal representative from the start of the preparatory phase and for the remainder of the asylum procedure, unless the asylum seeker expressly declines this.

2. The legal representative assigned shall inform the asylum seeker as quickly as possible about the asylum seeker’s chances in the asylum procedure.

3. Legal representation shall last, under the accelerated and the Dublin procedure, until a legally binding decision is taken, or until a decision is taken about carrying out an extended procedure. Article 102l is reserved.

4. Legal representation shall end when the legal representative assigned informs the asylum seeker that he or she does not wish to submit an appeal because it would have no prospect of success. This shall take place as quickly as possible after notification of the decision to reject asylum.

....”

Article 102i: Tasks of the provider

“1. The provider under Article 102f paragraph 2 is responsible in particular for providing, organising and implementing counselling and legal representation in federal centres. It shall ensure the quality of the counselling and legal representation.

2. The provider shall determine the persons to whom counselling and legal representation is assigned. It shall assign the persons responsible for legal representation to the asylum seekers.

3. Persons professionally involved in counselling asylum seekers are allowed to provide counselling.

4. Attorneys are allowed to provide legal representation. Persons with a university degree in law who are involved in counselling and representing asylum seekers professionally are also allowed to provide legal representation.”

Article 102l

“1. Following allocation to a canton, asylum seekers may contact a legal advice agency or the legal representative allocated free of charge at steps of the procedure at first instance relevant to the decision, in particular if an additional interview is held on the grounds for asylum.

1bis. Following allocation to a canton, asylum seekers may contact a legal advice agency or the legal representative allocated free of charge for the advice and assistance under Article 102k paragraph 1 letter g unless this advice and assistance has already been provided in a federal centre.

...”

Article 108: Time limits for appeals

“...

3. An appeal against decisions to dismiss an application and against rulings in accordance with Article 23 paragraph 1 and Article 40 in conjunction with Article 6a paragraph 2 letter a must be submitted within five working days of notification of the ruling.”

Article 109: Time limits for decisions

“...

3. In the case of appeals against decisions to dismiss an application and against rulings under Article 23 paragraph 1 and Article 40 in conjunction with Article 6a paragraph 2 letter a, it normally decides within 5 working days.

4. The time limits laid down in paragraphs 1 and 3 may be exceeded by a few days if there are valid reasons.

...”

Article 111a: Procedure and decision

“1. The Federal Administrative Court may dispense with an exchange of written submissions.

...”

II. RELEVANT DOMESTIC PRACTICE

44. The Federal Council designated Albania as a State where there is protection from persecution, within the meaning of Article 6a of the LAsi, in Annex 2 to the Asylum Procedure Ordinance 1 of 11 August 1999 (“OA 1”, RS 142.311). On the basis of the political situation in that country and the human rights situation as regards the rights guaranteed by the UN International Covenant on Civil and Political Rights of 16 December 1966, it considered Albania to be a “safe native country or country of origin” and a “safe third country”. Asylum-seekers are presumed to be safe from persecution in safe native countries or countries of origin, and the principle of non-refoulement is presumed to be respected in safe third countries. An asylum-seeker may, however, rebut this presumption and prove the contrary. Where European States are concerned, affiliation to the Council of Europe and ratification of and compliance with the Convention are of particular importance to their classification as safe countries or safe third countries. The time-limit for appealing against a decision to return an asylum-seeker to a safe country is five working days from notification of the decision. In principle, the TAF must rule within five working days on appeals against such decisions.

45. Asylum-seekers are interviewed by the SEM. If the SEM considers that the interview clearly shows that refugee status is unlikely to be granted and if there are no obstacles to removal from Switzerland, the claim is

rejected without further investigation (Article 40 LAsi, paragraph 43 above). The fact that an asylum-seeker comes from a safe country of origin or from a safe third country may constitute an argument in favour of applying the accelerated procedure without additional examination rather than the extended procedure. During an extended procedure, additional investigative measures (for example a thorough examination of the documents filed or information from the Swiss embassy in the country concerned) may be initiated (Article 26d LAsi, paragraph 43 above).

III. RELEVANT COUNTRY INFORMATION ON ALBANIA

46. For the latest overview of the country of origin information about Albania by national and international organisations, see *A.D. and Others v. Sweden*, no. 22283/21, §§ 39-44, 7 May 2024.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

47. The applicants complained that their removal to Albania would be in breach of Articles 2 and 3 of the Convention, which read as follows:

Article 2

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

....”

Article 3

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

A. Admissibility

48. The Government submitted that the applicants had not exhausted domestic remedies in respect of the new facts and evidence, which referred to time periods both before and after the TAF’s decision of 29 December 2020. They argued that those new elements had not been provided to the Swiss authorities although they could and should have been relied on in the context of an application for review and an application for reconsideration of the asylum claim.

49. The applicants replied that they had provided numerous documents and items of evidence at their interviews, but that the SEM officer had refused

to put some of them in the file, saying that the documents in question should be left with their representative. They explained that their legal representative in the extended procedure had not sent any more documents to the SEM after the interviews. During the TAF process, they explained that their representative after they had been transferred to the canton had not told them that the SEM had rejected their asylum claim, nor consulted them about appealing to the TAF. They said that they had subsequently asked the same legal representative to file additional evidence, but that he had been very slow to respond.

50. The Court observes that the gist of the applicants' complaints is that they are at risk of violations of the Convention because of the first applicant's research and publications about the activities of Albanian political actors under the former communist government. It notes that the applicants put the same arguments to the TAF, which examined whether the decision to reject the asylum claim which the applicants were appealing against was compatible with the Convention in its judgment of 29 December 2020. During the interviews for his asylum claim, the first applicant also mentioned that, after arriving in Switzerland, he had resigned from his position of the director of the ICCC, that he had continued to appear in the Albanian media and that he had continued to receive threats (see paragraphs 13, 14 and 42 above). The Swiss authorities were therefore aware that the first applicant had not ceased his political activities after arriving in Switzerland. The applicants also sought a review of the judgment of 29 December 2020 and for their asylum claim to be re-examined, but were unsuccessful (see paragraphs 36–39 above).

51. The Court therefore considers that the above-mentioned complaints were raised with the domestic authorities, and it accordingly rejects the Government's objection that domestic remedies were not exhausted. Finding that the complaints were not, moreover, manifestly ill-founded or inadmissible on any other ground referred to in Article 35 of the Convention, the Court declares them admissible.

B. Merits

1. The parties' arguments

(a) The applicants

52. The applicants contended that removal to Albania would put their lives at risk. They criticised the Swiss authorities for having based their decisions essentially on the presumption that Albania was a safe country and for having examined their case summarily, without a rigorous assessment of whether there was a real risk of treatment contrary to Articles 2 and 3 of the Convention. They asserted that the authorities had failed to appreciate the political situation in Albania and the highly politicised nature of their case. They alleged that there was a culture of corruption and impunity in Albania,

and that the first applicant had a high profile, having denounced many of the perpetrators of crimes committed under the communist regime. In that regard, they stated that he had been the subject of attacks, defamation and threats from various influential individuals, including members of the Albanian Parliament. In their view, the death threats which the first applicant had received before their departure from Albania constituted serious evidence that their fears were well-founded, particularly since, once in Switzerland, the first applicant had continued to denounce former collaborators with the communist regime and had given evidence in the criminal proceedings brought against E.C. in Germany.

53. They considered that the first applicant's work and special status, as well as the threat to his life, had been downplayed and even misrepresented by the Swiss authorities. The fact that he had obtained a copy of a document from the office of the Albanian President in April 2019 did not attest to a support of his cause, but was the normal cooperation to be expected from a State body. In any event, Albania was a parliamentary democracy and the powers of the President as against those of the Parliament were very limited, so such support would be of limited value.

54. Turning to the argument that the first applicant had not reported the incidents of 31 October and 20 November 2019 to the police, they insisted that those events had to be seen in the context of the inaction of the police in the face of the previous complaints about death threats made by the first applicant and his lawyer in September 2019, as well as the other claims and complaints he had made, all of which had been ignored. They stressed that the activities of the ICCG had been suppressed after the first applicant's departure, something which the Swiss authorities had also failed to duly take into consideration.

55. In so far as the authorities had questioned the reasons for the first applicant making it public that he had sought asylum on 6 December 2019, they responded by saying that the first applicant's departure had already become known in Albania by that time, and that in any event the first applicant had been careful not to disclose where he was seeking asylum.

56. Disputing the Government's assertions, they insisted that if they were returned to Albania, the Albanian State would be both unwilling and unable to protect them. They disagreed that the political crisis had been overcome after 2019, and submitted that the situation remained volatile and unstable.

57. They also considered that the Swiss authorities had failed to give due weight to the best interests of the children in their examination of the case.

58. In the applicants' opinion, the Swiss authorities had not conducted the asylum procedure with the diligence required given the risk to their lives if they were returned to Albania. In particular, the SEM had refused to accept some significant evidence during the second applicant's interview on 14 January 2020. The first applicant had attempted to file further evidence on 18 February 2020, but that too was returned to him. Most of this evidence

concerned the period prior to the applicants' departure from Albania, and therefore it could have strengthened their asylum claim. It was re-submitted to the SEM and the TAF for the purposes of the revision procedure.

59. The applicants pointed out that they had learnt of the appeal to the TAF only after it had been lodged, and that although they had provided additional information and documents to their legal representative in November 2020, he had failed to pass those to the TAF. They therefore questioned whether their legal representation for the asylum proceedings had been adequate and asserted that their representative was to blame for not having sought an extension time to lodge the appeal to the TAF and for not collecting further evidence from them.

60. In relation to the latest set of events, the applicants stated, firstly, that the Munich Prosecutor's office had brought criminal proceedings against E.C. and, secondly, that a key witness in that case had been murdered, adding that the first applicant had played an important role in those proceedings. They insisted that H.B.'s death must have been linked to that investigation, as the first applicant had publicly stated. In respect of the evidence from between 2020 and 2022, in their view it constituted both reliable and strong evidence that the lives of the first applicant and his family would be at risk if they were returned to Albania.

(b) The Government

61. The Government submitted that after a thorough examination of all the circumstances of the case and an analysis of the current general situation in Albania both the SEM and the TAF had come to the conclusion that neither the first applicant nor the rest of his family would be exposed to an identifiable and serious risk of treatment contrary to Articles 2 and 3 of the Convention if they were returned to Albania. The decision had been taken after an examination conducted under the extended procedure, despite the designation of Albania as a safe country of origin, and the detailed conclusions of the TAF had not been called into question in any subsequent submissions.

62. The Government asserted that the applicants' asylum claims had been rigorously reviewed by the Swiss authorities and claimed that the applicants had failed to provide sufficient evidence in support of their allegations. They said that the SEM decision was based on three principal grounds: that Albania had been designated a safe country of origin; that there was no evidence of persecution by the Albanian State; and that there was no evidence that Albania had been unable or unwilling to protect the first applicant from persecution by others. In any event, the TAF had not simply referred to the designation of Albania as a safe country of origin; it had proceeded with a full review of the application in view of the first applicant's high profile, rather than using the procedure employed for a majority of asylum-seekers

from that country. In conducting their analysis the TAF had relied on updated and reliable sources, taking into account the current situation in Albania.

63. In so far as the applicants had pointed to a number of documents that the SEM had not taken into account, the Government stressed that it was the function of the SEM to select the evidence that was relevant to the asylum claim. The examination had been rigorous and thorough, and, as the applicants had acknowledged, a large number of the documents they had provided had been taken into account. As to the alleged shortcomings of the legal representative, the Government were of the opinion that the applicants had never raised the issue of their allegedly inadequate legal representation with the domestic authorities or before the Court. Evidence of that problem could have been filed with the SEM or the TAF in the appropriate form and within the applicable time-limits. The applicants' application for revision of 10 November 2021 had also been duly examined.

64. As to their situation prior to their departure from Albania, the Government maintained that the detailed discussions of the SEM and the TAF were correct. They asserted that the suggestions that State agents had been behind the threats made on 20 November 2019 and the attempted break-in into his house were no more than conjectures. The first applicant could have sought protection against the real perpetrators of the incidents from the Albanian State, which was in a position to provide the applicants with adequate protection if necessary. As to the media attacks, the respondent State took the view that, even if they had been particularly sharp and unpleasant, the first applicant had enjoyed support in other publications. The first applicant's observations concerning corruption in the judiciary and of a culture of impunity in the upper echelons of the Albanian State were of a general nature and had no direct connection with his case. The first applicant had never been physically attacked, nor subjected to any legal pursuit in Albania. The fact that his complaints were dismissed did not in itself mean that the authorities wanted to harm the applicants or to deny them protection. The first applicant had been supported publicly by the President of Albania. They also noted the positive political developments in Albania after 2019.

65. With regard to the first applicant's activities in Switzerland, the Government pointed out that the ICCC was still active and that other prominent members of the organisation were still resident in Albania and did not appear to have been targeted after the applicant's departure. The first applicant had stepped down from his position as the director of the ICCC, and there were no reasons to believe that he would still be in danger upon return to Albania. They argued that the positions taken by the first applicant since the beginning of 2020 did not involve any new or critical information that could have endangered him, as stressed in the subsequent examinations. They asserted that the first applicant himself did not consider those points to be particularly important, as he had failed to give the relevant information to the SEM and the TAF in time. They criticised him for having been particularly

vague about the other activities he had undertaken after his departure. They found it surprising that the first applicant had made a public announcement in December 2020 that he was seeking asylum abroad, despite claiming that his life was in danger; they also noted that there had been a campaign of support for him, as shown by public statements and letters.

66. As to the events of 2022 and 2023 (see paragraphs 40-42 above), the Government did not find that those could alter the conclusions previously reached. The proceedings in Munich against E.C. had already been pending when the asylum claim was made, and there was nothing in the interview of October 2022 to indicate a real risk of ill-treatment if the applicants were returned to Albania.

67. Overall, there was nothing to support the applicants' claim that they would be in greater danger if returned to Albania than they had been prior to their departure. The Government concluded that Articles 2 and 3 of the Convention presented no obstacles to the applicants' return to Albania.

(c) Third party

68. The AIRE Centre observed that in circumstances such as those of the present case the Member States must establish whether there are substantial grounds for believing that an asylum-seeker, if expelled to his or her country of origin, will run a real risk of being subjected to treatment contrary to Articles 2 and 3 of the Convention. It stated that in assessing whether there is a real risk of ill-treatment, the Court must apply the criteria rigorously, and that in the present case, its assessment must focus on the foreseeable consequences of the applicant's expulsion to Albania, taking into account the general situation in that country and the individual circumstances of the person concerned. In their view, the fact that the State to which the asylum-seekers would be returned was a State party to the Convention was not decisive, since Albania faced challenges with regard to the rule of law, its judicial system and the execution of the Court's judgments and the applicants would not, were they to be removed, have any realistic prospect of obtaining protection from the Albanian judicial system.

2. The Court's assessment

(a) General principles

69. The relevant general principles have been summarised in the Court's judgments of *F.G. v. Sweden* ([GC], no. 43611/11, §§ 111-27, 23 March 2016); *J.K. and Others v. Sweden* ([GC], no. 59166/12, §§ 77-105, 23 August 2016); *Khasanov and Rakhmanov v. Russia* ([GC], nos. 28492/15 and 49975/15, § 109, 29 April 2022); and, more recently, in *A.M.A. v. the Netherlands* (no. 23048/19, §§ 66-69, 24 October 2024).

70. In particular, the Court reiterates that Contracting States have the right, as a matter of well-established international law and subject to their

treaty obligations, including the Convention, to control the entry, residence, removal and deportation of aliens. However, the removal or deportation 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, if removed or deported, would face a real risk of being subjected to treatment contrary to Article 3 of the Convention in the destination country. In these circumstances, Article 3 of the Convention implies an obligation not to remove or deport the person in question to that country (see *F.G. v. Sweden*, cited above, § 111, and the cases cited therein).

71. The Court further reiterates that, in view of the fact that Article 3 enshrines one of the most fundamental values of democratic societies and prohibits in absolute terms torture and inhuman or degrading treatment or punishment, it is imperative that the risk assessment of the existence of a real risk that is to be carried out by the domestic authorities must necessarily be a rigorous one (see *F.G. v. Sweden*, § 113; *J.K. and Others v. Sweden*, § 77; and *Khasanov and Rakhmanov*, § 109, all cited above). The domestic authorities are obliged to take into account not only the evidence submitted by the applicant but also all other facts which are relevant in the case under examination (*Khasanov and Rakhmanov*, § 113, and *J.K. and Others v. Sweden*, § 87, both cited above). As regards the distribution of the burden of proof, the Court clarified in *J.K. and Others v. Sweden* (cited above, §§ 91-98) that it was the shared duty of an asylum-seeker and the immigration authorities to ascertain and evaluate all relevant facts in asylum proceedings.

72. The Court acknowledges the need to ease the strain of the number of asylum applications received and in particular to find a way to deal with repetitive and/or clearly abusive or manifestly ill-founded applications for asylum. However, given the absolute character of Article 3 of the Convention, such difficulties cannot release a State from its obligations under that provision (see *A.M.A. v. the Netherlands*, cited above, § 69, with further references). In this context, it addressed the issues arising in situations of removals to a “safe country” in the case of *Ilias and Ahmed v. Hungary* ([GC], no. 47287/15, §§ 139-141, 21 November 2019, with further references).

73. 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. A full and *ex nunc* evaluation is required where it is necessary to take into account information that has come to light after the final decision by the domestic authorities was taken (see *Khasanov and Rakhmanov*, cited above, § 106). When carrying out the risk assessment, it is a firmly established principle that the Court may obtain relevant materials of its own motion (*ibid.*, § 116).

(b) Application of these principles in the present case

74. The issue before the Court is whether the domestic authorities' risk assessment prior to the decision on the applicants' removal met the procedural standards required by Articles 2 and 3 of the Convention. The Court observes, first, that as regards the general situation in Albania, it has no reason to doubt the appropriateness of its designation as a safe country, so that a return to that country would not in principle result in a violation of Article 3 of the Convention (see *A.D. v. Sweden*, cited above, §§ 68-71). The Court then has to examine the applicants' individual circumstances.

75. The applicants sought refugee status from the domestic authorities on the basis that the first applicant had been carrying out research into the activities of the secret police during the communist era and into former members of the communist government, some of whom allegedly still held influential positions in Albanian state institutions (see paragraphs 6-14 above). The applicants asserted that those activities had put the first applicant and his family at direct risk of death and ill-treatment, and that the authorities had been unwilling or unable to protect them.

76. The Court observes that Swiss authorities have not expressed any disagreement with the applicants' assertions as to the factual circumstances. The authorities essentially found that the attacks on the first applicant were individual initiatives and did not emanate from the Albanian State; that there was no evidence that the current authorities had intended to harm him for reasons connected with his work; that the hostility experienced by the first applicant had not reached a level at which it would call for protection under Article 3; and that the Albanian State was able and willing to protect him against third party attacks.

77. The Court finds that the examination of the applicants' asylum claim conducted by the Swiss migration authorities and the TAF cannot be seen as failing the standard of "rigorous assessment".

78. First, despite the fact that Albania was designated as "safe country of origin" within the meaning of Article 6a(2)(a) LAsi (see paragraphs 43 and 44 above), in view of the family's profile the SEM decided in February 2020 that the decision should be taken following the extended procedure (see paragraph 23 above). The SEM then rejected their claim in a detailed decision dated 12 October 2020 (paragraphs 25-28 above). After assessing the risk of the applicants being subjected to treatment prohibited by the Convention if returned to Albania, the TAF confirmed the SEM's decision in a judgment of 29 December 2020 (paragraphs 30-35 above). The TAF noted, first of all, the first applicant's high profile as a political figure. On the presumption that Albania was a safe country of origin, the TAF found that there was no significant state persecution there and that the country was able to offer its nationals effective and efficient protection against persecution by third parties (non-state actors). It then examined whether the applicants had provided specific and detailed evidence of persecution to rebut the

presumption that Albania was a safe country. The TAF analysed the first applicant's activities and the attacks on him and concluded that the attacks were exclusively the result of individual initiatives and that they in no way concerned the Albanian State, as the Albanian authorities were in a position to provide the applicants with adequate protection. It therefore does not appear that the procedure placed an unduly heavy burden on the applicants or that it was too restrictive given Albania's designation as a safe country of origin (compare with *M.D. and M.A. v. Belgium*, no. 58689/12, § 65, 19 January 2016).

79. Second, several detailed interviews were held with the first, second and third applicants. During the interviews they provided substantial documentary evidence to support their claim, and by the end of the interviews they were satisfied that full background information had been presented (see paragraphs 18-22 above). During the interviews they were assisted by an interpreter and legal advisers, as was the also the situation on appeal, and they have never made any formal complaints about their legal representation. There is therefore no indication that these proceedings lacked effective procedural safeguards or were otherwise flawed.

80. Turning to the applicants' procedural challenges, the Court finds no evidence to support the applicants' assertion that important elements of their claim were overlooked or even misinterpreted. Even if the SEM did not accept certain further documents during the interviews and those documents were therefore not taken into account by the TAF, there is nothing to suggest that any of those documents would have led the authorities to a different conclusion. The applicants made extensive oral statements about the relevant events and have acknowledged that the additional documents could have strengthened their application but did not contain any new issues (see paragraph 58 above). The Court is satisfied that the migration authorities knew about those documents and did not consider them sufficiently relevant to the asylum claim, given the other evidence provided by the applicants; it further accepts that the applicants did not ask for those documents to be filed at the end of the interviews (see paragraphs 20 and 21 above) or afterwards (compare and contrast with *M.D. and M.A. v. Belgium*, cited above, §§ 65-67). Lastly, all relevant documents were provided by the applicants to the SEM and the TAF during the revision and re-examination process (see paragraphs 37-39 above). Even if those proceedings were of limited scope, they concluded that none of those documents indicated a risk of persecution or inhuman treatment of the applicants if they were removed.

81. Nor does the Court find, as the applicants alleged, that the Swiss authorities had failed to take into account events that had occurred after the applicants' departure from Albania in November 2019. On the contrary, it is evident from the decisions taken between 2020 and 2022 that the SEM and the TAF had taken note of the first applicant's continued media activity after his arrival in Switzerland and of other developments such as his questioning

by the German authorities in the context of proceedings that had been going on since 2019 (see, *a contrario*, *K.I. v. France*, no. 5560/19, § 144, 15 April 2021). They concluded that none of those occurrences warranted a different conclusion as to the lack of danger to the applicants were they to return to Albania.

82. Lastly, the Court finds that the Swiss authorities relied on contemporaneous and reliable sources about the situation in Albania (see *Khasanov and Rakhmanov*, cited above, §§ 102-103). The reports they considered indicated that although Albania continued to face some challenges in the functioning of the judiciary and law enforcement, by 2020 the previous acute political crisis had been overcome and the overall situation did not suggest that the authorities would be unable to protect the population in general or someone with the first applicant's high profile (see also *A.D. v. Sweden*, cited above, § 71). The SEM and the TAF noted a lack of reports of persecution of the first applicant's colleagues and successor, and his change of status and the public support for his cause (see paragraphs 33 and 34 above). The Court does not find any reasons to question the reliability of these sources or the conclusions drawn.

83. The Court reiterates that domestic authorities are best placed to assess facts when making a risk assessment (see, among other authorities, *F.G. v. Sweden*, § 118, and *Khasanov and Rakhmanov*, § 105, both cited above). It is satisfied that in the present case the presumption that Albania was a safe country was sufficiently supported by an appropriate assessment of the applicants' individual situation (see, *mutatis mutandis*, *Ilias and Ahmed*, cited above, §§ 139-41) and finds no reasons to substitute its own evaluation for that of the domestic authorities.

84. In these circumstances, it finds no violation of Articles 2 and 3 in case of the applicants' removal to Albania.

II. ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLES 2 AND 3 OF THE CONVENTION

85. The applicants complained that they had no effective remedies against the above violations as provided in Article 13 of the Convention, which reads as follows:

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

86. Having regard to the Court's above findings under Articles 2 and 3 of the Convention, the Court considers that the applicants' complaint under Article 13 amounts to a restatement of their arguments under those Articles.

Even if this complaint was declared admissible, there is no need to give a separate ruling on it.

III. RULE 39 OF THE RULES OF COURT

87. 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 for a reference under Article 43 of the Convention.

88. It considers that the indication made to the Government under Rule 39 of the Rules of Court (see paragraph 40 above) 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 there would be no violation of Articles 2 and 3 of the Convention if the applicants were returned to Albania;
3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
4. *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 22 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Pere Pastor Vilanova
President

APPENDIX

List of applicants:

Application no. 9577/21

No.	Applicant	Year of birth	Nationality
1.	Y	1967	Albanian
2.	Z	1980	Albanian
3.	A	2005	Albanian
4.	B	2006	Albanian
5.	C	2009	Albanian
6.	D	2013	Albanian
7.	E	2015	Albanian