



# OPERATIONAL GUIDANCE NOTE

## ALBANIA

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## 1 Introduction

- 1.1** This document provides UK Border Agency caseworkers with guidance on the nature and handling of the most common types of claims received from nationals/residents of Albania, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseworkers must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.
- 1.4** With effect from 1 April 2003 Albania is a country listed in Section 94 of the Nationality, Immigration and Asylum Act 2002 and the prima face evidence is that the current underlying situation in the country remains the same or similar to that considered when the country was first designated. Asylum and human rights claims must be considered on their individual merits. However, if, following consideration, a claim from an applicant who is entitled to reside in Albania is refused, Caseworkers must certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country Assessment**

- 2.1** Caseworkers should refer the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/read-and-download-the-report/>

## **2.2 Actors of Protection**

- 2.2.1** Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.2.2** Local and regional public order police directorates operationally and administratively come under the command of the state police general director, who in turn responds to the Ministry of Interior. The state police are the main organization responsible for internal security. The Republican Guard protects high-level state officials, foreign dignitaries, and certain state properties. The armed forces under the Ministry of Defense are mainly responsible for protecting the independence, sovereignty, and territorial integrity of the country, with some additional tasks of assisting the population in times of humanitarian need. The State Intelligence Service (SHISH)

gathers information and carries out foreign intelligence and counterintelligence activities aimed at protecting the state's integrity, independence, and constitutional order.<sup>1</sup>

- 2.2.3** Civilian authorities maintained effective control over the state police, Republican Guard, armed forces, and SHISH, although periodically state resources were used for personal gain. For example, instances of police accepting bribes in return for not issuing citations or not entering personal information into crime databases were widespread. The government has mechanisms to investigate and punish abuse and corruption. As part of institutional reform efforts, the government's Internal Control Service (ICS) conducted audits, responded to complaints, and carried out investigations with increased emphasis on human rights, prison conditions, and adherence to standard operating procedures.<sup>2</sup>
- 2.2.4** The People's Advocate Ombudsman of the Republic of Albania was envisaged in Chapter VI of the Albanian Constitution approved in November 1998. Article 60 states that the People's Advocate defends the rights, freedoms and lawful interests of individuals from unlawful or improper actions or failures to act of the organs of public administration. The Parliament passed the Law on the People's Advocate in February 1999. The People's Advocate is elected by three-fifths of all members of the Assembly for a five year period, with the right of re-election.<sup>3</sup> On the 22 December 2011, the Albanian Parliament elected Mr Igli Totozani as the People's Advocate of the Republic of Albania. The People's Advocate, upon finding or suspecting that a right has been violated, initiates an investigation of the case, upon the complaint or request of the interested or injured person, or on his own motion if the particular case in the public domain, but always after providing the interested or injured party consents.<sup>4</sup>
- 2.2.5** In 2012, the UN Committee Against Torture expressed concern that the People's Advocate monitors the situation in detention through the Unit for Prevention of Torture only once it receives allegations of abuse and with prior consent, therefore limiting the protective aspects of its preventive visits. The Committee is also concerned at the lack of professional staff, financial resources and methodological resources provided to the People's Advocate and the absence of assignments for more than two years, due to which the places of detention have been visited only irregularly.<sup>5</sup>
- 2.2.6** During 2012 the ombudsman processed complaints against police officers mainly on arrest and detention problems. The ombudsman received 4,252 complaints during 2012 and investigated or provided counsel in 385 cases. State police officers did not always enforce the law equally. Personal associations, political or criminal connections, poor infrastructure, and lack of equipment or inadequate supervision often influenced enforcement of laws. Low salaries, poor motivation and leadership, and a lack of

<sup>1</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>2</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>3</sup> Amended Constitution of the Republic of Albania, 21 April 2008, Article 60 <http://www.unhcr.org/refworld/docid/4c1f68912.html> and [Republic of Albanian](http://www.unhcr.org/refworld/docid/4c1f68912.html)

<sup>4</sup> People's Advocate website, About Us (undated current webpage accessed March 2013 [http://www.avokatipopullit.gov.al/?page\\_id=219&lang=en](http://www.avokatipopullit.gov.al/?page_id=219&lang=en)

<sup>5</sup> UN Committee Against Torture, Consideration of Reports submitted by States Parties under Article 19 of the Convention, 26 June 2012, Paragraphs 10 and 11 <http://www2.ohchr.org/english/bodies/cat/cats48.htm>

diversity in the workforce contributed to continued corruption and unprofessional behaviour.<sup>6</sup>

- 2.2.7** The Albanian Helsinki Committee (AHC) reported that police sometimes used excessive force or inhuman treatment. The majority of the complaints involved unjustified stops by police, detention past legal deadlines, failure to make citizens aware of their rights when detained, and poor conditions of detention centres. The AHC said police often reported that detainees claiming abuse arrived with pre-existing injuries.<sup>7</sup>
- 2.2.8** The constitution provides for an independent judiciary. However, political pressure, intimidation, widespread corruption, and limited resources sometimes prevented the judiciary from functioning independently and efficiently. Additionally, court hearings were often closed to the public. Court security officers routinely refused entry to hearings and routinely called the presiding judge in each case to ask if the person seeking admission could attend the hearing. Some agencies routinely disregarded court orders. The politicization of appointments to the High and Constitutional Courts threatened to undermine the independence and integrity of these institutions. On 11 June 2012, based on 2008 constitutional amendments, the assembly elected a president by a simple majority in a process that many observers viewed as partisan and in contravention of the constitution which calls for the President of the Republic to represent the “unity of the Albanian people.”<sup>8</sup>
- 2.2.9** The law provides that defendants are presumed innocent until convicted. The court system does not provide for jury trials. Defendants have the right to consult with an attorney, and to have one provided at public expense if they cannot afford one. Defendants have the right to confront witnesses against them, and present witness and evidence in their defence. Defendants have the right to appeal. The government generally respected these rights in practice.<sup>9</sup>
- 2.2.10** While individuals and organizations may seek civil remedies for human rights violations, courts were susceptible to corruption, inefficiency, intimidation, and political tampering. Many court hearings were held in judges’ offices, which contributed to a lack of professionalism and opportunities for corruption. These factors undermined the judiciary’s authority, contributed to controversial court decisions, and led to an inconsistent application of civil law.<sup>10</sup>
- 2.2.11** According to Freedom House – Nations in Transit 2012 – Albania’s Judicial institutions continue to suffer from political interference, financial instability and corruption. Enforcement of Court decisions is weak and 2011 saw no progress in revising and adopting critical judicial reforms. On 9 September 2011, Skerdilajd Konomi, a Judge known for his integrity and professionalism, was assassinated in a car explosion in the city of Vlora. A record number of 15 Judges were put under police protection in 2011.<sup>11</sup> Insufficient funding directly affects the capacity of the

<sup>6</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>7</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>8</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>9</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>10</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>11</sup> Freedom House – Nations in Transit 2012 – Albania, 6 June 2012

Courts to deliver justice as many lack basic infrastructure. Around 90 per cent of trials are held at Judges' offices instead of Courtrooms, hindering the ability of the Courts to carry out open trials and increasing opportunities for abuse and corrupt practices. The lack of audio and video recording equipment in the offices also prevents the transparent monitoring of sessions.<sup>12</sup>

- 2.2.12** According to the European Commission (EC) 2012, little progress was made as regards access to justice. The implementation of the Law on Free Legal Aid has been slow due to insufficient budgetary allocations and a lack of co-ordination between relevant institutions. Additionally, neither the bylaws regarding the recruitment of free legal aid lawyers or the procedures to request free legal aid are implemented effectively. The State Commission for Legal Aid has handled few cases and public awareness of the law and the Commission's services is insufficient, including among local Government staff working with vulnerable groups. Access to justice for vulnerable groups is not ensured, notably due to the high judicial administration fees. The excessive length of judicial proceedings remains a concern.<sup>13</sup>

## **2.3 Internal Relocation**

- 2.3.1** Caseworkers must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.3.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.

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[http://www.freedomhouse.org/sites/default/files/Albania\\_final\\_0.pdf](http://www.freedomhouse.org/sites/default/files/Albania_final_0.pdf)

<sup>12</sup> Freedom House – Nations in Transit 2012 – Albania, 6 June 2012

[http://www.freedomhouse.org/sites/default/files/Albania\\_final\\_0.pdf](http://www.freedomhouse.org/sites/default/files/Albania_final_0.pdf)

<sup>13</sup> European Commission 2012 Albania Progress Report, 10 October 2012 P.17

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)



- 2.3.3** The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. Internal migrants must transfer their civil registration to their new community of residence to receive government services and must prove they are legally domiciled through property ownership, a property rental agreement, or utility bills. Many persons could not provide this proof and thus lacked access to essential services. Other citizens lacked formal registration in the communities in which they resided, particularly Roma and Balkan-Egyptians. The law does not prohibit their registration, but it was often difficult in practice to complete.<sup>14</sup>
- 2.3.4** There are no legal restrictions on women's freedom of movement in Albania, but in reality, freedom of movement is restricted by the expectation that a married woman will move to live with her husband's family. In addition, women may have to seek permission from their husbands or family before travelling within Albania or abroad. For some women, freedom of movement on a day-to-day basis is restricted, with 15 per cent reporting that their husband/partner took the final decision as to whether their wife could go and visit her family members.<sup>15</sup>
- 2.3.5** It may be practical for applicants in some categories who may have a well-founded fear of persecution in one area to relocate to other parts of Albania where they would not have a well founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so. Careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant. Caseworkers need to consider the ability of the persecutor to pursue the claimant in the proposed site of relocation and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.

## **2.4 Country Guidance Caselaw**

### **EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) 15 October 2012**

1. While there remain a number of active blood feuds in Albania, they are few and declining. There are a small number of deaths annually arising from those feuds and a small number of adults and children living in self-confinement for protection. Government programmes to educate self-confined children exist but very few children are involved in them.
2. The existence of a 'modern blood feud' is not established: Kanun blood feuds have always allowed for the possibility of pre-emptive killing by a dominant clan.
3. The Albanian state has taken steps to improve state protection, but in areas where Kanun law predominates (particularly in northern Albania) those steps do not yet provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant. Internal relocation to an area of Albania

<sup>14</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 2 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>15</sup> OECD Social Institutions and Gender Index, Gender Equality and Social Institutions in Albania 2012, Restricted civil liberties <http://genderindex.org/country/albania>

- less dependent on the Kanun may provide sufficient protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan.
4. International protection under the Refugee Convention, Qualification Directive or Articles 2 and 3 ECHR is not available to an appellant who is willing and intends to commit a revenge killing on return to his country of origin, by reference to that intention.
  5. Where there is an active feud affecting an individual and self-confinement is the only option, that person will normally qualify for Refugee status.
  6. In determining whether an active blood feud exists, the fact-finding Tribunal should consider:
    - (i) the history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud;
    - (ii) the length of time since the last death and the relationship of the last person killed to the appellant;
    - (iii) the ability of members of the aggressor clan to locate the appellant if returned to another part of Albania; and
    - (iv) the past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek protection from the Albanian authorities.
  7. In order to establish that there is an active blood feud affecting him personally, an appellant must produce satisfactory individual evidence of its existence in relation to him. In particular, the appellant must establish:
    - (i) his profile as a potential target of the feud identified and which family carried out the most recent killing; and
    - (ii) whether the appellant has been, or other members of his family have been, or are currently in self-confinement within Albania.
  8. Attestation letters from Albanian non-governmental organisations (NGOs) should not in general be regarded as reliable evidence of the existence of a feud.
  9. Documents originating from the Albanian Courts, police or prosecution service, if genuine, may assist in establishing the existence of a blood feud at the date of the document relied upon, subject to the test of reliability set out in *A v Secretary of State for the Home Department (Pakistan)* [2002] UKIAT 00439, [2002] Imm A R 318 (Tanveer Ahmed).
  10. Unless factual, prompt and consistent, Albanian press reports will add little or no evidential weight in considering whether a feud exists.
  11. Whether the feud continues and what the attitude of the aggressor clan to its pursuit may be will remain questions of fact to be determined by the fact-finding Tribunal.
  12. This guidance replaces that contained in TB (Blood feuds – relevant risk factors) Albania CG [2004] UKIAT 000158.

**Supreme Court. *RT (Zimbabwe) & others v Secretary of State for the Home Department* [2012] UKSC 38 (25 July 2012)**

The Supreme Court ruled that the rationale of the decision in *HJ (Iran)* applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot

be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

**AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) 18 February 2010**

It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds.

At its worst the psychological damage inflicted on a victim of trafficking can lead to difficulties in reintegrating into Albanian society and has implications on whether or not it is possible for the victim of trafficking, should she fear persecution in her own area, to relocate.

Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child.

Those that see themselves outside society, for example, divorced or abandoned women, or others who wish to live abroad, may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women are not "trafficked women" in the sense that they have not been abducted against their will, there is likely to be considerable violence within the relationships and the psychological affect of that violence may lead to a situation where the pressures which they are under and the lack of freedom they are under means that such women should be treated as trafficked women.

The Albanian Government and authorities are taking steps to protect trafficked women who return but such steps are not always effective. When considering whether or not there is a sufficiency of protection for a trafficked woman who is to be returned her particular circumstances must be considered. Not all trafficked women returning to Albania will be unable to access the arrangements and facilities available to enable successful re-integration.

Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following: 1) The social status and economic standing of the trafficked woman's family. 2) The level of education of the trafficked woman or her family. 3) The trafficked woman's state of health, particularly her mental health. 4) The presence of an illegitimate child. 5) The area of origin of the trafficked woman's family. 6) The trafficked woman's age.

**MK (Lesbians) Albania CG [2009] UKAIT 0003 9 September 2009**

**(1)** It cannot be said that without more there is a real risk that a woman without family support in Albania would suffer destitution amounting to inhuman or



degrading treatment resulting in a breach of her rights under article 3 of the ECHR or persecution, but each case must be determined on its own facts.

(2) Although it is no longer illegal for consenting adults to have homosexual relations in private, homosexual men known to be members of gay associations and those who visit cruising areas in the centre of Tirana are likely be harassed and on occasions ill-treated by the police and in individual cases homosexual men may be at risk of harm from members of their families.

(3) In general terms, lesbian women do not frequent cruising areas and do not join LGBT organisations. Therefore there is lacking the opportunity for them to be harassed or persecuted by the police.

(4) In general terms in Albania women of lesbian orientation are able to carry on lesbian relationships discreetly without attracting the risk of serious harm. A lesbian woman, whose sexual orientation becomes known, may be at risk of harm from members of her family, particularly if she is from a traditional family from the north of Albania, but each case must be determined on its merits. In such a case, however, it is likely that there would be an adequacy of state protection.

(5) In any particular case where the safety of the return of a lesbian woman to Albania is in issue, it will have to be determined whether she is likely to behave discreetly upon return and if so whether "discretion" is something that she can reasonably be expected to tolerate, in the light of all of the circumstances of the case, including the social norms and religious beliefs commonly held in Albania. Such a person will only establish a right to refugee status if she can establish that the apprehended violation of her fundamental rights is likely to attain a substantial level of seriousness.

**SB (PSG – Protection Regulations – Reg 6) Moldova CG [2008] UKAIT 00002 26 November 2007**

The AIT found that "In order for a particular social group to exist, the group must have a distinct identity in the relevant society because it is perceived as being different by the surrounding society. We emphasise both that the particular social group must have a distinct identity as well as the requirement that the distinct identity of the group must arise because the group is perceived as being different by the surrounding society. Although it would not be necessary for the whole of a given society to perceive the group to be different from it, it is not necessary for us to lay any guidelines in this respect in this case

**K (Sierra Leone) v SSHD [2006] UKHL Civ 46 (This caselaw refers to Sierra Leone but makes findings regarding Particular Social Groups (PSG) 18 October 2006**

(PSG - FGM) Women in Sierra Leone are a particular social group. They have the unchangeable characteristic of being in a socially inferior position to men. Furthermore, if this wide definition of a social group was not correct then an alternative definition would be intact women in Sierra Leone.

**VD (Trafficking) Albania CG [2004] UKIAT00115 26 May 2004**

The IAT considered whether in general it is likely that an individual would be trafficked, and found that it is not reasonably likely that an individual Albanian girl or woman would be at risk of being trafficked even if the individual falls within the 14 to 17 year old age group. The tribunal also considered whether there is in general a

sufficiency of protection for women who may be at risk of being trafficked and held that in the totality of evidence before them that there is in general a sufficiency of protection against trafficking in Albania. The Tribunal noted the 2003 (at that time CG) case of [UKIAT 00023 K](#) (see below) but found that this turned on the particular facts of that case and should not be relied upon in support of the proposition that, in general terms, there is a real risk that a particular individual would become a victim of trafficking or that there is in general insufficient protection for trafficked victims.

**DM (Sufficiency of Protection – PSG – Women – Domestic Violence) Albania CG [2004] UKIAT 00059 Heard on 15 March 2004, promulgated on the 1 April 2004.**

The appellant fled Albania because her ex-boyfriend threatened to kill her. The police considered the threats. The IAT found that the Adjudicator was wrong to construe the judgments in [Shah & Islam v. Secretary of State for the Home Department \[1999\] Imm AR 283](#) as providing any broad basis for saying that women generally are to be regarded as capable of forming a particular social group for Refugee Convention purposes. [Shah & Islam](#) dealt with very specific circumstances under which it can be held that there is lack of sufficiency of protection for women generally in Pakistan. The situation in Albania is entirely different from that in Pakistan and there is no evidence to suggest that the position of women is actively undermined by the provision of law. The Tribunal found that there is sufficiency of protection for women in general and that their position in society is not actively undermined by the provision of law.

As regards sufficiency of protection the IAT referred to [Osman v UK \[2000\] 29 EHRR245](#) – and concluded that in connection with Article 2 one has to bear in mind the difficulties involved in policing modern society, the unpredictability of human conduct, and the operational choices which have to be made in terms of priorities and resources. An obligation to provide protection had to be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.

**KOCI [2003] EWCA Civ 1507 22 October 2003**

The Court of Appeal found that whilst each case should be considered on its individual merits and conditions in Albania at the relevant time, the evidence at that time pointed towards protection being inadequate on the evidence of the individual case, “not merely as a generality in such cases but actually in his own specific case.”

**IM (Risk – Objective Evidence – Homosexuals) Albania CG [2003] UKIAT 00067 Heard 15 July 2003, promulgated 8 September 2003.**

After a review of the available, albeit limited, objective evidence the Tribunal had regard to the decriminalisation of homosexuality, the presence of an officially registered gay rights group and the almost entire absence of any reported ill-treatment of homosexuals in Albania since 1994. The IAT concluded that there was also no evidence to show that the police or the Albanian authorities ill-treat Gay men.

**Skenderaj [C/2001/1336 promulgated 26 April 2002]**

The Court of Appeal held that families involved in the Blood Feud were not a distinct social group - the threat to Skenderaj was “a private matter” and his family was not regarded as a distinct group by Albanian society any more than most other families

in the country. The critical factor in cases where a victim of non-state persecution is unwilling to seek state protection is not necessarily whether the state is able and willing to provide a sufficiency of protection to the **Horvath** standard, though in many cases it may be highly relevant to the victim's well-founded fear of persecution. The test is whether the potential victim's unwillingness to seek it flows from that fear.

### 3. Main Categories of Claims

**3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Albania. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

**3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's judgment in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)')

**3.3** For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all Agency activities.

**3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#))

### Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

**3.5** An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of

asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

### **Other severe humanitarian conditions and general levels of violence**

- 3.6** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

### **Credibility**

- 3.8** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'Section 4 – Making the Decision in the Asylum Instruction' ['Considering the asylum claim and assessing credibility'](#). Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UK Border Agency file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.
- 3.9 Blood Feuds**
- 3.9.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution as a result of a 'blood feud'.
- 3.9.2 Treatment.** Feuds and revenge killings began to resurface in the 1990s during Albania's transition from communism to democracy. These crimes reactivated the old Kanuns (traditional codes), specifically the Leke Dukagjini Kanun. The Albanian blood feud is a centuries old custom that draws on tribal tradition and customary law. A distinguishing feature of blood feuds from other crimes is that they are carried out publicly. Northern Albanians, in particular, have respect for the *Kanun*

and have passed it from generation to generation for hundreds of years. All blood feuds involve violations of honour.<sup>16</sup>

- 3.9.3** Incidents of societal killings, including both “blood feud” and revenge killings, appeared to increase during 2012. Such killings sometimes involved criminal gangs. Although long-standing traditions surrounding blood feuds prohibit killing children or women, NGOs reported several cases where perpetrators intentionally targeted minors or women. The National Reconciliation Committee (NRC) claimed that the number of women killed in blood-feud related homicides was 10 times higher than in any of the last 20 years. The ombudsman reported some cases in which authorities refused to protect families or prevent blood feud killings. The Albania Helsinki Committee reported that the non-legal traditions (kanun) dictating blood feud were often intentionally misinterpreted to justify revenge or societal killings.<sup>17</sup>
- 3.9.4** In October 2012, the UN Committee on the Rights of the Child expressed concern over the persistence of “blood feuds” resulting from the application of customary law known as “Kanun” and in particular the killing of children and the confinement of a large number of children for fear of being killed, especially in the northern areas of Albania. In that regard, the Committee expressed deep concern that in May 2012, a 14 year-old girl was killed in a “blood feud”.<sup>18</sup> According to an October 2012 EC report, in June 2012, the Albanian State Police launched a database of persons directly involved in blood feuds. This could help to address the lack of reliable data in this area and stated that more decisive action by the authorities is required to address the problem.<sup>19</sup>
- 3.9.5** According to the Immigration and Refugee Board of Canada in a statement prepared by the Albanian MOI for the Research Directorate, an official indicated that some NGOs in Albania have issued certificates or attestation letters to people involved in blood feuds, but these organisations do not have any “legal right” to issue such certificates. Similarly, in correspondence with the Research Directorate, the Executive Director of the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR), an Albanian NGO established in 1995 for the purpose of conflict resolution and the promotion of tolerance and understanding, stated that some NGOs have issued attestation letters about blood feuds, but that they do not have any official authority to act in this capacity.<sup>20</sup>
- 3.9.6** The official of the Albanian MOI indicated that the police, prosecution office and the Courts are the state institutions that handle blood feud problems and that the Courts and Prosecution Office are the only agencies authorised by the Government to issue certificates related to blood feuds. Without providing details, the official indicated that these certificates can be issued after authorities “evaluate whether a case requires further legal protection or not.” In contrast to the official's statement, two NGOs active in blood-feud mediation indicated that, to their knowledge, there

<sup>16</sup> Canadian Refugee Board (IRB) Issue paper ‘Albania Blood Feuds’, May 2008  
[http://www.ecoi.net/file\\_upload/1684\\_1243258524\\_http-www2-irb-cisr-gc-ca-en-research-publications-index-e-hm.pdf](http://www.ecoi.net/file_upload/1684_1243258524_http-www2-irb-cisr-gc-ca-en-research-publications-index-e-hm.pdf)

<sup>17</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013  
 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>18</sup> UN Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, 5 October 2012, paragraph 31  
[http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ALB-CO-2-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ALB-CO-2-4_en.pdf)

<sup>19</sup> European Commission, 2012 Albania Progress Report, 10 October 2012 p.17  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

<sup>20</sup> Immigration and Refugee Board of Canada, Albania – Attestation Letters for Blood Feuds – 1 February 2012  
<http://www.unhcr.org/refworld/docid/4f5f1ab32.html>



are no governmental agencies that issue attestation letters about blood feuds. Further information about the issuance, processing and storage of these certificates by the Courts and Prosecution Office could not be found among the sources consulted by the Research Directorate.<sup>21</sup>

- 3.9.7** Regarding the role of NGOs in mediating blood feuds, the MOI official explained that NGOs operate in accordance with the Constitution and the 1999 Law on Mediation. The official specifically listed the Committee of Nationwide Reconciliation (CNR), the Mission of Feuds Reconciliation, the League of Missionaries of Peace, the AFCR and the Centre for Justice and Peace as organisations active in blood feud mediation. However, in response to a question about whether any NGOs are approved by the Government to verify the authenticity of blood feuds, he noted that NGOs "do not duplicate the powers of the Court and the Prosecution Office."<sup>22</sup>
- 3.9.8** In contrast to the official, the Chairman of the CNR, in a correspondence with the Research Directorate, stated that the CNR is the "only organisation recognized by the Government and it has full authority, approved by the Government to verify blood feuds and issue the attestation letters." In correspondence with the Research Directorate, the chairman of the CNR offered a recommendation letter of 29 September 2009, which states that the Albanian Ministry of Labour, Social Affairs and Equal Opportunities co-operates with the CNR and recommends "all local and international institutions" to contact the committee with regard to verification of the families in blood feuds. The letter further describes the CNR as the "leading forum of the associations and missions of reconciliation, protects the rights of the families affected by blood feuds and certifies all the issues related to the families in blood feuds."<sup>23</sup>
- 3.9.9** The Chairman of the CNR supplied the following information on its procedures. The attestation letters are issued only after the verification of a blood feud and confirmation that it would be difficult to reconcile. The attestation letters are signed only by the chairman of the CNR, Mr. Gjin Marku. No one else is authorised to sign the letters. The CNR creates a file for a particular blood feud, which includes a copy of the letter. The file may contain information on the situation that caused the blood feud, contact details of individuals involved in the blood feud and notes on reconciliation attempts. All the files are stored in accordance with the Albanian Data Protection Act, in the main office of the CNR in Tirana.<sup>24</sup>
- 3.9.10** The existence of a mentality which encouraged blood feuds was a continuing concern in Albania, warned the UN Special Rapporteur on extrajudicial killings in February 2010. He stated that blood feud killings continued to have corrosive affects on society, especially the practice of self-isolation by families who feared revenge killings and a still widespread belief in the justness of collective punishment of innocent family members. However, according to the UN expert, the number of blood feud has decreased significantly over the past 5 years and civil society organisations and some media reports have clearly exaggerated the extent of blood feud killings. He urged the Government to conduct a survey and analysis of the

<sup>21</sup> Immigration and Refugee Board of Canada, Albania – Attestation Letters for Blood Feuds – 1 February 2012 <http://www.unhcr.org/refworld/docid/4f5f1ab32.html>

<sup>22</sup> Immigration and Refugee Board of Canada, Albania – Attestation Letters for Blood Feuds – 1 February 2012 <http://www.unhcr.org/refworld/docid/4f5f1ab32.html>

<sup>23</sup> Immigration and Refugee Board of Canada, Albania – Attestation Letters for Blood Feuds – 1 February 2012 <http://www.unhcr.org/refworld/docid/4f5f1ab32.html>

<sup>24</sup> Immigration and Refugee Board of Canada, Albania – Attestation Letters for Blood Feuds – 1 February 2012 <http://www.unhcr.org/refworld/docid/4f5f1ab32.html>

blood feud phenomenon in Albania and take greater steps to facilitate reconciliation between families and emphasised the importance of education on human rights to tackle the main causes of blood feuds.<sup>25</sup>

- 3.9.11** In the Country Guidance Case of [EH \(Blood Feuds\) Albania CG \[2012\] UKUT 00348](#) (IAC) the Tribunal found that whilst there remain a number of active blood feuds in Albania, they are few and declining. There are a small number of deaths annually arising from those feuds and a small number of adults and children living in self-confinement for protection. Government programmes to educate self-confined children exist but very few children are involved in them. The existence of a 'modern blood feud' is not established, however, Kanun (traditional codes) blood feuds have always allowed for the possibility of pre-emptive killing by a dominant clan. The Albanian state has taken steps to improve state protection, but in areas where Kanun law predominates, particularly in northern Albania, those steps do not yet provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant. Internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence and commitment to prosecution of the feud by the aggressor clan.<sup>26</sup>

**See also:** [Actors of Protection \(Section 2.2 above\)](#)

[Internal Relocation \(Section 2.3 above\)](#)

[Caselaw \(Section 2.4 above\)](#)

- 3.9.12 Conclusion.** There are a small number of active blood feuds in Albania. In general, in northern areas where Kanun law predominates, the Albanian Government is unable to offer effective protection for its citizens who are the victims of a blood feud. Where there is an active feud affecting an individual and self-confinement is the only option, that person will normally qualify for Refugee status. Internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence and commitment to prosecution of the feud by the aggressor clan. Internal relocation may therefore be appropriate in some cases, but caseworkers will also need to consider the reasonableness of internal relocation and whether it would be unduly harsh.
- 3.9.13** The UNHCR consider that in blood feud cases there may be some individuals who, because of the circumstances of their case, may be considered to be a particular social group (PSG).<sup>27</sup> Where persecution is due to an act of an individual and not because of membership of a particular family, (as in [Skenderaj](#)) then there will be no PSG. However, if the persecution is purely on the basis of membership of a family, as in most blood feud cases and as in [Fornah K \(Sierra Leone\) v SSHD \[2006\] UKHL Civ 46 18 October 2006](#), then the applicant will be considered to be a member of a PSG. Where an applicant is able to demonstrate that the circumstances of their case result in them being a member of a PSG and where

<sup>25</sup> United Nations Human Rights Council, [Albania can do more to eliminate blood feuds and domestic violence, says UN expert on extrajudicial killings](#), 23 February 2010 <http://reliefweb.int/node/346027>

<sup>26</sup> Country Guidance Case EH (Blood Feuds) Albania CG [2012] UKUT 00348 <http://www.unhcr.org/refworld/pdfid/507d85452.pdf>

<sup>27</sup> UNHCR position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a fear of persecution due to an individual's membership of a family or clan engaged in a blood feud, 17 March 2006, <http://www.unhcr.org/refworld/docid/44201a574.html>

they are unable to avail themselves of sufficient protection from the Government or relocate internally then a grant of asylum will be appropriate.

### 3.10 Organised crime

**310.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of organised criminal gangs and that law enforcement agencies, such as the police, are not able to offer sufficient protection. Some claimants will claim that the police are linked to criminal gangs and that they face unlawful arrest and detention.

**3.10.2 Treatment.** Organised crime is present in Albania<sup>28</sup> and criminal activity has increased overall, as exemplified by the rise in homicides and armed robberies.<sup>29</sup> In February 2013, the Chief Commissioner of the police was killed in a 'mafia-style hit' in what was the third highest ranking Albanian police officer to be murdered in 8 months.<sup>30</sup> A study by the Institute for Democracy and Mediation shows that Albania has registered an exponential growth in violent crimes from 2008 to 2011, including a marked growth in violent crimes such as murder, battery, robbery and theft. According to the study, the factors that have contributed to the rise in criminality, apart from the poor performance of law enforcement institutions, include the economic crisis and particularly the political crisis in Albania during the last three years.<sup>31</sup>

**3.10.3** According to Europol, within the European Union (EU), Albanian speaking groups were active in the fields of cocaine, heroin, synthetic drug and cannabis trafficking. The financial resources of these groups have enabled them to interact with criminal organisations in source areas for illicit drugs, as well as to proactively identify new criminal opportunities. Some of their proceeds were reportedly destined for support organisations for the former Kosovo Liberation Army.<sup>32</sup>

**3.10.4** In the field of police co-operation and the fight against organised crime — one of the key priorities set in the Commission's Opinion — some progress can be reported. Greater use of the MEMEX criminal intelligence information system has improved data exchange within the Albanian State Police (ASP). However, the operational capacity of the forensic laboratory, especially DNA interpretation and a DNA database needs further support. A decision was taken to restructure the witness protection services with the purpose to increase their effectiveness and meet EU standards. An action plan against trafficking of vehicles has been adopted and progress has been made on detecting trafficked vehicles at the borders. The implementation of the 'anti-mafia law' has resulted in an increase in the seizure of criminal assets. According to the EC in their Report of 2012, efforts in this area need to be intensified substantially through closer co-ordination between law

<sup>28</sup> U.S Department of State International Travel – Albania Country Specific Information – 27 August 2012  
[http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1076.html#victim](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1076.html#victim)

<sup>29</sup> OSAC Albania 2012 Crime and Safety Report, 3 February 2012  
<https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=12106>

<sup>30</sup> Balkan Insight, Albania Police Chief Murdered in Mafia-Style Hit, 25 February 2013  
<http://www.balkaninsight.com/en/article/albania-police-chief-murdered-in-mafia-style-hit>

<sup>31</sup> Balkan Insight, Albania Registers Sharp Rise in Crime, 7 September 2012  
<http://www.balkaninsight.com/en/article/albania-registers-stunning-rise-in-criminality-study-finds>

<sup>32</sup> EUROPOL – EU Organised Crime Threat Assessment (OCTA) 2011  
[https://www.europol.europa.eu/sites/default/files/publications/octa\\_2011.pdf](https://www.europol.europa.eu/sites/default/files/publications/octa_2011.pdf)

enforcement and judicial authorities, leading to effective recovery of illicitly-obtained assets.<sup>33</sup>

- 3.10.5** The EC states that inter-institutional co-operation has progressed in investigations of financial crime and money laundering. However, there is an urgent need for key institutions to step up co-ordination and information exchange and therefore maximise their capacity to investigate serious and organised crime. Continuous specialised training involving police officers, prosecutors and Judges remains necessary. Standard operating procedures for managing serious crime scenes have been introduced. Threat assessment and proactive investigations should be further promoted according to the EC in their Report of 2012. Preparations in order to build a solid track record of investigations, prosecutions and convictions at all levels are moderately advanced.<sup>34</sup>
- 3.10.6** Albania made a formal application for membership of the EU on 28 April 2009, on the basis of a 2006 Stabilisation and Association Agreement.<sup>35</sup> The negotiations took three and a half years. This is because the EU thought Albania was moving too slowly in the fight against corruption and organised crime. Therefore, Albania is not expected to join the EU until 2015 at the earliest. EU Governments say strengthening the rule of law and combating organised crime and corruption remain “urgent challenges” for Albania.<sup>36</sup>
- 3.10.7** While the law provides criminal penalties for official corruption, the government did not implement the law effectively, and officials frequently engaged in corrupt practices with impunity. The government prosecuted corrupt officials and managed complaints regarding police corruption through the ombudsman and the Internal Control Service of the Albanian State Police. For much of 2012, broad immunity provisions for judges, members of parliament, and other high-level officials prohibited not only prosecution but any use of investigative measures, hindering the government’s ability to prosecute high-level corruption. On 18 September 2012, the assembly passed legislation enabling prosecutors to start investigations against judges, assembly members, and other high-level officials. The government’s task force against organised crime coordinated anticorruption activities. The task force includes several ministers and heads of independent state-owned agencies, such as the public electricity company, and representatives of the police and intelligence organizations. The joint investigative units to fight economic crime and corruption (JIUs) are multiagency units that investigated and prosecuted public corruption and other financial crimes. The JIUs continued to bring cases in numerous sectors with extensive corruption.<sup>37</sup>
- 3.10.8** JIUs continued to be good mechanism for investigating and prosecuting corruption cases. The High Inspectorate of Declaration and Audit of Assets (HIDAA) made progress in the detection of suspicious declarations and some police investigations of corruption cases and prosecution of low and mid-level officials has increased. However, convictions in corruption cases remain rare. There is not yet a convincing

<sup>33</sup> European Commission 2012 Albania Progress Report, 10 October 2012, Page 56  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

<sup>34</sup> European Commission 2012 Albania Progress Report, 10 October 2012, Page 57  
[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

<sup>35</sup> BBC News – Albania Profile – 5 February 2013  
<http://www.bbc.co.uk/news/world-europe-17679574>

<sup>36</sup> BBC News – EU Enlargement: The Next Eight - 2 January 2013  
<http://www.bbc.co.uk/news/world-europe-11283616>

<sup>37</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013  
 Section 4 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

track record of investigations, prosecutions and convictions in corruption cases at all levels including senior officials. A lack of expertise in financial investigations and of technical equipment for special investigative measures hampers the effectiveness of investigations in corruption cases. A particular concern is the general culture of a reactive approach to investigating corruption cases and the almost complete lack of proactive investigations. Intelligence from different sources has not systematically been followed up and risk assessments were not systematically used. Limited human and financial resources remain a constraint for the JIUs, the HIDAA, the Prosecutor's Office and the different departments dealing with anticorruption measures.<sup>38</sup>

See also: [Actors of Protection \(Section 2.2 above\)](#)

[Internal relocation \(Section 2.3 above\)](#)

[Caselaw \(Section 2.4 above\)](#)

**3.10.9 Conclusion.** The Albanian authorities are making significant efforts to combat organised crime, but with limited success. Relatively high levels of organised crime remain within Albania and protection may not be available in all cases particularly where the corruption of state officials is an issue. Internal relocation is likely to be available to individuals seeking to escape a localised threat from members of organised criminal gangs so long as it would not be unduly harsh. A grant of asylum or Humanitarian Protection will not, therefore, generally be appropriate in these cases.

### **3.11 Involvement with opposition political parties**

**3.11.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of members of a rival political party.

**3.11.2 Treatment** Albania is a parliamentary democracy. The Albanian Constitution was adopted by referendum on 22 November 1998 and came into effect shortly afterwards. The Constitution sets out the basis for an executive consisting of the President and Council of Ministers, a Parliamentary Assembly and a Judiciary including the Constitutional Court and High Court. The President is elected for a 5-year term by a three-fifths majority of Members of Parliament. No president may serve more than 2 terms in office. The current incumbent is President Bujar Nishani who took over from President Bamir Topi in July 2012.<sup>39</sup> Three previous attempts to elect a head of state failed because the ruling coalition and opposition could not agree on a consensus candidate. Opposition Socialist Party lawmakers were present, but did not vote.<sup>40</sup>

**3.11.3** In 2009 the country held parliamentary elections that the Organisation for Security and Cooperation in Europe (OSCE) / Office for Democratic Institutions and Human

<sup>38</sup> European Commission 2012 Albania Progress Report, 10 October 2012, Page 15

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

<sup>39</sup> Balkan Insight, Bujar Nishani Sworn in as Albania's President, 25 July 2012

<http://www.balkaninsight.com/en/article/bujar-nishani-sworn-in-as-albania-s-president>

<sup>40</sup> Radio Free Europe/Radio Liberty, Albanian Parliament Elects President At Fourth Attempt, 11 June 2012

<http://www.rferl.org/content/albania-elects-president/24611131.html>



Rights (ODIHR) election observation mission stated met most OSCE commitments but, nevertheless, “did not fully realize the country’s potential to adhere to the highest standards for democratic elections.” The observation mission specifically cited problems in administrative procedures with the vote count, “a highly polarized environment,” biased media coverage, and procedural violations such as proxy voting.<sup>41</sup>

- 3.11.4** In May 2011 there were nationwide elections for mayors and city councils that the OSCE election observation mission characterized as “competitive and transparent” but “highly polarized, with mistrust between political parties in government and opposition.” The Central Election Commission’s (CEC) decision to overturn initial results in the mayoral contest in Tirana was widely perceived to be partisan and undermined confidence in its independence and impartiality.<sup>42</sup>
- 3.11.5** According to Freedom House, the year 2012 will mark one hundred years of independence since the establishment of the modern state of Albania and resolving the ongoing political and institutional crises before preparations begin for the 2013 presidential election campaign is crucial for ensuring a stable election environment. The President, who has considerable influence over the Judiciary, will be elected for the first time by Parliament through a simple majority vote. The General Prosecutor will finish her current mandate and the newly elected President will nominate a new appointee to be approved by Parliament.<sup>43</sup> Confrontations between opposition-dominated local Governments and local representatives of the central Government occurred frequently in the first half of 2011. Local election campaigning officially started in April 2011 and was marred by a large number of violent incidents.<sup>44</sup>
- 3.11.6** On 21 January 2011, the Republican Guard opened fire on a crowd of opposition protesters, killing four people and wounding dozens more.<sup>45</sup> By the end of 2011, 11 Republican Guards were under investigation in connection with the deaths. More than 140 police officers and demonstrators were injured overall. Police beat dispersing demonstrators and several journalists. At least 112 demonstrators were arrested and some 30 were subsequently convicted of setting fire to vehicles, assaulting police and breaching the security perimeter of the Prime Minister’s offices. Commissioners of the Ombudsperson’s Office visited Tirana police stations and detention centres following the January demonstrations. They stated that detained demonstrators, two of whom bore marks of physical ill-treatment, alleged being ill-treated during arrest, and that psychological pressure had been used to make them sign self-incriminating statements. Nine complaints of police ill-treatment were reportedly filed.<sup>46</sup> In February 2013, Tirana District Court ruled that two former officers of the Republican Guard were not guilty of the deaths of three protesters. Prime Minister Berisha has repeatedly called the protest a failed coup attempt and has vowed to punish those responsible.<sup>47</sup>

<sup>41</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 3 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>42</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 3 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>43</sup> Freedom House – Nations in Transit 2012 – Albania, 6 June 2012 [http://www.freedomhouse.org/sites/default/files/Albania\\_final\\_0.pdf](http://www.freedomhouse.org/sites/default/files/Albania_final_0.pdf)

<sup>44</sup> Freedom House – Nations in Transit 2012 – Albania, 6 June 2012 [http://www.freedomhouse.org/sites/default/files/Albania\\_final\\_0.pdf](http://www.freedomhouse.org/sites/default/files/Albania_final_0.pdf)

<sup>45</sup> Freedom House – Nations in Transit 2012 – Albania, 6 June 2012 [http://www.freedomhouse.org/sites/default/files/Albania\\_final\\_0.pdf](http://www.freedomhouse.org/sites/default/files/Albania_final_0.pdf)

<sup>46</sup> Amnesty International Annual Report 2012 – Albania, 24 May 2012 <https://www.amnesty.org/en/region/albania/report-2012>

<sup>47</sup> Balkan Insight, Albania Guardsmen Acquitted of Killing Protesters, 7 February 2013

- 3.11.7** The constitution provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic elections based on universal suffrage.<sup>48</sup>

**See also:** [Actors of Protection](#) (Section 2.2 above)

[Internal Relocation](#) (Section 2.3 above)

[Caselaw](#) (Section 2.4 above)

- 3.11.8 Conclusion.** Albania is a parliamentary democracy and political parties are able to register and contest elections. There is limited evidence of persecution or a breach of Article 3 of the ECHR. Those claiming to face threats from political opponents should be able to seek protection from the authorities or internally relocate to escape a localised threat, apart from in cases where the claimant fears the State. Therefore, a claim based on fear of members of opposing political parties is unlikely to qualify for a grant of asylum or Humanitarian Protection.

## **3.12 Trafficking of Women**

- 3.12.1** Some claimants will claim asylum or make human rights claim based on their fear of being trafficked or their fear of those who trafficked them if they return to Albania.
- 3.12.2 Treatment.** The US State Department Trafficking in Persons Report 2012 noted that Albania had taken concrete steps to improve anti-trafficking strategy, but stated that “widespread corruption, particularly within the Judiciary, continued to obstruct overall anti-trafficking law enforcement and victim protection efforts”. In February 2011, the Government adopted a national action plan against human trafficking.<sup>49</sup>
- 3.12.3** Albania is primarily a source country for men, women and children subjected to sex trafficking and forced labour, including the forced begging of children. Albanian women and children continue to be subjected to sex trafficking within the country. Albanian victims are subjected to conditions of forced labour and sex trafficking in Greece, Italy, Macedonia, Kosovo, Serbia and throughout Western Europe. Authorities reported finding trafficking victims from Greece and Ukraine in Albania during 2011. Children were exploited for commercial sex, forced begging and forced criminality, such as burglary and drug distribution and girls were also subjected to prostitution or forced labour after arranged marriage. There is evidence that Albanian men are subjected to forced labour in agriculture in Greece and other neighbouring countries. Re-trafficking of Albanian victims continue to be a problem.<sup>50</sup>
- 3.12.4** The Government of Albania does not fully comply with the minimum standards for the elimination of trafficking, however it is making significant efforts to do so. During 2011, the Government increased its capacity to proactively identify trafficking victims, used its witness protection program to protect trafficking victims and

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<http://www.balkaninsight.com/en/article/albania-guardsmen-not-guilty-of-protestors-death>

<sup>48</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013

Section 4 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>49</sup> USSD Trafficking in Persons Report 2012 19 June 2012

<http://www.state.gov/documents/organization/192594.pdf>

<sup>50</sup> USSD Trafficking in Persons Report 2012, 19 June 2012

<http://www.state.gov/documents/organization/192594.pdf>

supplied short-term funding for NGOs to help victims. However, the Government's overall lack of sustained funding to anti-trafficking NGOs resulted in temporary closure of a shelter during 2011, negatively impacting victim assistance. Moreover, widespread corruption, particularly among the Judiciary, continued to hinder overall anti-trafficking efforts.<sup>51</sup>

- 3.12.5** The Government of Albania sustained its anti-trafficking law enforcement efforts over 2010, though it convicted fewer trafficking offenders than during the previous year. Albania criminally prohibits sex and labour trafficking through articles 110(a), 128(b), and 114(b) of its criminal code, which prescribe penalties from five to 15 years' imprisonment. These penalties are sufficiently stringent and exceed those prescribed for other serious crimes, such as rape. The Serious Crimes Prosecution division reported investigating 27 human trafficking suspects in 2011, compared with 29 suspects investigated in 2010. During 2011, the Serious Crimes Court prosecuted five suspected trafficking offenders. All five prosecutions resulted in convictions in 2011, compared with 11 convictions in 2010. Penalties imposed on the five convicted offenders ranged from fines to 15 years' imprisonment. The Government continued its criminal investigation into a labour trafficking case initiated in 2010, but it has yet to formally charge any suspects. NGOs praised the victim-sensitive response from prosecutors appointed to trafficking cases during 2011, including their referral of victims to care. According to a 2011 report on Albania produced by the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA), the Albanian Government's official recognition of the need to increase the response to internal trafficking has yet to lead to tangible actions. Pervasive corruption in all levels and sectors of Albanian society continued to seriously affect the Government's ability to address its human trafficking problem. The Government did not report taking any law enforcement action against trafficking-related complicity in 2011.<sup>52</sup>
- 3.12.6** The Government of Albania made some notable progress in strengthening its capacity to identify and protect victims of trafficking in 2011. The Government's lack of sustained funding to NGOs, however, resulted in the temporary closure of one shelter during 2011. In 2011, the Government reported identifying 84 new trafficking victims via the national referral mechanism, compared with 97 trafficking victims identified in 2010. NGOs reported assisting a total of 132 trafficking victims throughout 2011. In July 2011, the Government approved victim-centred standard operating procedures (SOPs) in collaboration with civil society to improve identification of trafficking victims and their referral to care. Although the new SOPs separated trafficking victims' status from their willingness to press charges against their traffickers, NGOs noted cases in which police and social workers granted victim status only after the victims agreed to formally participate in proceedings against their traffickers.<sup>53</sup>
- 3.12.7** According to the EC, Albania remains a source country for trafficking in human beings and recent improvements need to be complemented with a victim-centred approach, including reintegration services and witness protection.<sup>54</sup> In its Concluding Observations, the Committee on the Rights of the Child expressed

<sup>51</sup> USSD Trafficking in Persons Report 2012 19 June 2012

<http://www.state.gov/documents/organization/192594.pdf>

<sup>52</sup> USSD Trafficking in Persons Report 2012, 19 June 2012

<http://www.state.gov/documents/organization/192594.pdf>

<sup>53</sup> USSD Trafficking in Persons Report 2012, 19 June 2012

<http://www.state.gov/documents/organization/192594.pdf>

<sup>54</sup> European Commission, 2012 Albania Progress Report, 10 October 2012 p.19

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

concern that “Roma and Egyptian minority children are over represented among children victims of trafficking. The involvement of police and Government officials in trafficking cases and the corruption within the Judiciary hamper the overall antitrafficking law enforcement. Efficient mechanisms to protect witnesses and victims of trafficking have not been set up and the State does not financially support NGOs providing trafficking victims with shelter, care and assistance.”<sup>55</sup>

- 3.12.8** The Commentary on the March 2011 Country of Origin Information report on Albania prepared for the Independent Advisory Group on Country Information explained with regard to re-trafficking that “this is when a trafficked person is repatriated to Albania and after a certain time in a shelter, police station or other place is re-trafficked again abroad. The main cause for this is the difficult life the individual faces upon return to Albania. During such returns, police notify the parents or in their absence other close relative of the individual they hold. This is the first moment of the breach of privacy as these relatives generally are not aware of the activities the person was engaged in abroad – especially when this involves work in the sex industry. Second, because Albania is such a small country where families are closely related to each other and trace relations and acquaintances in various parts of the country, there is a significant and real danger that the police officers handling the case will either know the person, or relatives of the person, or know someone who knows the person. As such, the return of an individual who has been a trafficking victim to Albania is generally not an anonymous event; information spreads around quickly, with the result that stigmatisation of the individual and the family prejudices the return to their area of origin. This stigmatisation means that the individual cannot lead a meaningful life and participate in activities such as going outside the compounds of the house – not even in the garden – go to work or school. They effectively live imprisoned. Some years ago a returned young woman committed suicide after a few months of living in her parental home under such conditions, as her life had become unbearable.”<sup>56</sup>
- 3.12.9** In December 2011, the Group of Experts on Action against Trafficking in Human Beings (GRETA) urged the Albanian authorities to “ensure that the assistance measures provided for in law are guaranteed in practice, by finding solutions for their appropriate financing. This is of particular importance in a context where the social reintegration of victims trafficked for the purpose of sexual exploitation and wishing to return from abroad to Albania is sometimes made difficult by their rejection by society and their families. Further, GRETA considers that the Albanian authorities should take steps to ensure that victims of trafficking benefit from the free legal assistance to which they are entitled and can effectively exercise their right to compensation”.<sup>57</sup>
- 3.12.10** The Government encouraged victims to participate in investigations and prosecutions of trafficking offenders. Victims who pursued cases against their traffickers continued to be at risk from retribution and there was often a need for witness protection after a trial commenced. During 2011, 28 trafficking victims

<sup>55</sup> UN Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention, 5 October 2012, paragraph 82

[http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ALB-CO-2-4\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ALB-CO-2-4_en.pdf)

<sup>56</sup> Independent Advisory Group on Country Information, Commentary on the March 2011 Country of Origin Information (COI) report on Albania, May 2011 <http://icsinspector.independent.gov.uk/wp-content/uploads/2011/02/Evaluation-of-the-Country-of-Origin-Information-Report-on-Albania.pdf>

<sup>57</sup> Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania, 2 December 2011

[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2011\\_22\\_FGR\\_ALB\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_22_FGR_ALB_en.pdf)



assisted law enforcement officials in the investigation stage and two trafficking victims testified during trial. Notably, the Government enrolled one of these victims in its witness protection program. The Government reported it supplied five trafficking victims with financial stipends in order to assist with their reintegration after they left the shelter.<sup>58</sup>

**3.12.11** Albania sustained its efforts to prevent trafficking in persons during 2011, although it continued to rely primarily on international donors to fund anti-trafficking awareness campaigns. The Government continued to monitor its anti-trafficking efforts through its national anti-trafficking co-ordinator's office, which helped launch in 2011 a donor-funded national campaign entitled "Childhood is Not Exploitation for Work," which targeted schools and at-risk children to raise awareness about forced labour among the public and teachers. During 2011, the national co-ordinator's office took steps to facilitate the registration of unregistered children, who are especially vulnerable to trafficking in Albania. The Government continued to fund the national, toll-free, 24-hour hotline for victims and potential victims of trafficking. The Government made no discernible efforts to address demand for commercial sex acts.<sup>59</sup>

**See also:**        [Actors of Protection](#) (Section 2.2 above)

[Internal Relocation](#) (Section 2.3 above)

[Caselaw](#) (Section 2.4 above)

**3.12.12 Conclusion.** The Albanian Government has made significant efforts in recent years to fight human trafficking and has created legislative, organisational and operational frameworks in the areas of investigation, prosecution, protection and prevention. Although trafficking continues to be a problem in Albania, the Government has taken steps on several fronts to curb the activities of traffickers and to ensure that victims or potential victims can obtain protection from the authorities. There are a number of examples of the prosecution and conviction of traffickers with appropriate sentences. Trafficked women may be at risk of re-trafficking on return to Albania. Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable.

**3.12.13** Whilst the Albanian Government and authorities have taken steps to protect trafficked women who return such steps are not always effective. When considering whether or not there is a sufficiency of protection for a trafficked woman who is to be returned, caseworkers must take full account of the claimants particular circumstances (see below) and other facts of the case. Not all trafficked women returning to Albania will be able to access the arrangements and facilities available to enable successful re-integration and as such some trafficked women may well be members of a PSG as stated in the case [AM and BM](#). Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following: (i) the social status and

<sup>58</sup> USSD Trafficking in Persons Report 2012, 19 June 2012  
<http://www.state.gov/documents/organization/192594.pdf>

<sup>59</sup> USSD Trafficking in Persons Report 2012, 19 June 2012  
<http://www.state.gov/documents/organization/192594.pdf>



economic standing of the trafficked woman's family; (ii) the level of education of the trafficked woman or her family; (iii) the trafficked woman's state of health, particularly her mental health; (iv) the presence of an illegitimate child; (v) the area of origin of the trafficked woman's family (vi) the trafficked woman's age; (vi) the influence of traffickers; and (vii) the result of previous attempts to access protection. Where an applicant is able to demonstrate that they fall into this category a grant of asylum will be appropriate.

### **3.13 Victims of domestic violence**

- 3.13.1** Some women claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of members of their family due to domestic violence and that the authorities are not willing or able to offer sufficiency of protection.
- 3.13.2 Treatment.** Domestic violence against women, including spousal abuse, remained a serious problem in 2012. During 2012 police reported cases of domestic violence and the government pressed charges in some cases. The Department of Equal Opportunities at the Ministry of Labour, Social Affairs, and Equal Opportunity covers women's issues, including domestic violence.<sup>60</sup>
- 3.13.3** The government shelter for domestic violence victims in Tirana assisted 35 women and 37 children from April 2011 to May 2012. However, the shelter could not accept victims without a court order. After inspecting the shelter in April 2012, the ombudsman found cases of repeated abuse by shelter director Dodona Kaloshi, who had reportedly verbally degraded victims and forced some children to sleep on the floor. Police routinely denied protection to women housed at the shelter when they travelled to court appearances or to take their children to school, leaving some to be assaulted by their husbands while they were away from the shelter. After growing criticism and a television expose, the government removed Kaloshi from the position several weeks after the ombudsman's findings. At the end of 2011, NGOs operated 15 shelters to protect victims from domestic violence, six in Tirana and nine outside the capital. Police reported they received 2,349 domestic violence-related complaints through their emergency hotline. According to government figures in 2011, there were 2,526 cases of domestic violence reported during the year, compared with 2,181 in 2011. Police often did not have the training or capacity to deal with domestic violence cases.<sup>61</sup>
- 3.13.4** According to Amnesty International 2012, domestic violence remained widespread and shelters for women survivors were insufficient to meet the demand. Most incidents, including those involving violence against children, went unreported. Domestic violence was not a specific criminal offence and, except in the gravest cases, prosecution had to be instigated by the victim. Legislation providing free legal aid for people requesting protection orders was not implemented and despite training programmes, health workers reportedly often failed to provide certificated records of injuries. In most cases, proceedings were stopped, either because the petitioner withdrew, often due to social pressure and economic dependence on the perpetrator or due to lack of written evidence. Perpetrators who broke the terms of

<sup>60</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>61</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

protection orders were liable to fines or up to two years' imprisonment, but Courts rarely imposed custodial sentences.<sup>62</sup>

- 3.13.5** In September 2011, Servete Karoshi was killed by her husband, who had repeatedly ignored protection orders. She had reported his continued violence but was given no effective protection. In March 2011, legislation was adopted to provide basic economic assistance of US\$30 per month for victims for the duration of their protection order and also for victims of human trafficking.<sup>63</sup>
- 3.13.6** The physical integrity of Albanian women was inadequately protected. The Albanian Constitution does not contain any specific provisions regarding domestic violence, spousal rape, sexual harassment or female genital mutilation, although Albanian law does condemn these practices. Violence against women was very prevalent in Albania as many men, especially in the northeast, still adhered to a traditional code known as *Kanun* that establishes the authority of men over women.<sup>64</sup>
- 3.13.7** According to the UN Special Rapporteur in his report of March 2011, domestic violence was widespread in Albania and some deaths have resulted. Approximately one out of three Albanian women experience physical violence at home. The violence is most often spousal abuse, although it has also resulted from attempts to 'restore' honour. Studies specific to Albania highlighted cultural factors, including a strong historic tradition of male dominance, the fact that domestic violence has long been considered to be a 'normal' private part of family life and that Albanian society has emphasised hierarchical family order and intergenerational control. The *kanun* was seen as contributing to a culture of disrespect for and violence against women because of its patriarchal approach and because it specifically sanctions violence, including beatings for a disobedient wife.<sup>65</sup> Women who are unemployed, less educated and living in rural areas are seen as more vulnerable to violence.<sup>66</sup> The Government, with United Nations support, has developed a national strategy on gender equality and domestic violence which exposes failures of capacity, effectiveness, training and record keeping on the part of public health and medical officials, the police and the Judiciary.
- 3.13.8** The criminal code penalizes rape, including spousal rape. However, victims rarely reported spousal abuse, and officials did not prosecute spousal rape in practice. The concept of spousal rape was not well-established, and authorities and the public often did not consider it a crime. The law imposes penalties for rape and assault depending on the age of the victim. For rape of an adult, the prison term is three to 10 years; for rape of an adolescent between the ages of 14 and 18, the

<sup>62</sup> Amnesty International Annual Report 2012 – Albania, 24 May 2012

<https://www.amnesty.org/en/region/albania/report-2012>

<sup>63</sup> Amnesty International Annual Report 2012 – Albania, 24 May 2012

<https://www.amnesty.org/en/region/albania/report-2012>

<sup>64</sup> OECD Social Institutions and Gender Index 2012

Gender Equality and Social Institutions in Albania, Restricted physical integrity

<http://genderindex.org/country/albania> Date accessed 25 February 2013

<sup>65</sup> Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions 14 March 2011, III Domestic violence

[http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_680.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_680.pdf)

<sup>66</sup> Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions 14 March 2011, III Domestic violence

[http://reliefweb.int/sites/reliefweb.int/files/resources/Full\\_Report\\_680.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_680.pdf)

term is five to 15 years; and, for rape of a child under the age of 14, the term is seven to 15 years.<sup>67</sup>

- 3.13.9** The Osservatorio Balcani e Caucaso, an online news provider and research centre devoted to social and political change in South East Europe, stated in their report of 16 November 2011 that in 2006 Albania introduced a law on Measures for prevention of violence within families. This law was only passed in Parliament following strong pressure from civilians including a petition signed by 20,000 people. The law covered two important aspects. Firstly, it defined which public institutions were competent in dealing with domestic violence and secondly it granted the magistracy the power to put “protective and restrictive measures” into action in favour of the victims and against the violators.<sup>68</sup> Effective application of this law remains a problem as the relevant laws are not completed and a budget sufficient enough to put them into practice has not been set. A representative from the Association Useful to Albanian Women noted that “it is a matter of fact that since the beginning of 2011 there have been more cases of women killed yet no guilty person in prison. This clearly shows that the law is not working. The system and network of help finds obstacles in its way when trying to apply the law, plus there are no shelters for victims where they can start to rebuild their lives”.<sup>69</sup>
- 3.13.10** In April 2012, following an inspection of the National Centre for Victims of Domestic Violence, the People’s Advocate found that “illegal and unconstitutional ‘disciplinary’ measures have been imposed on a number of these women, such as denying them meals or refusing them permission to visit their children, restrictions on their right to communicate in private with their families and to use mobile phones within the Centre, disrespectful and insulting behaviour by the Director towards women at the Centre, failure to ensure the women’s security when they leave the Centre to attend court sessions, leaving them open to further attack by their partners and a lack of regulations fully setting out the rights and duties of staff and women sheltered at the Centre”.<sup>70</sup>
- 3.13.11** According to a George Washington University faculty member, access to long-term housing and employment is “nearly impossible” for survivors of domestic violence, and job prospects, even for educated women, are “dismal”. When there are jobs, these are mostly in Tirana and are commonly in boutiques, markets or even travel agencies. The highest paying, though more difficult, jobs to find are often limited to younger single women and are in cafés or telecommunications. Job prospects for older married or divorced women with children are extremely limited. According to Vatra’s annual report, the majority of their clients requiring services to deal with domestic violence had never worked and were economically dependent on their spouse or partner; many remained in violent relationships for fear that they could not support their children. Amnesty International similarly indicates that Albanian women lack economic independence and that those who leave violent relationships

<sup>67</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dldid=204254>

<sup>68</sup> Osservatorio Balcani e Caucaso – Domestic Violence in Albania – 16 November 2011

<http://www.balcanicaucaso.org/eng/Regions-and-countries/Albania/Domestic-violence-in-Albania-106487>

<sup>69</sup> Osservatorio Balcani e Caucaso – Domestic Violence in Albania – 16 November 2011

<http://www.balcanicaucaso.org/eng/Regions-and-countries/Albania/Domestic-violence-in-Albania-106487>

<sup>70</sup> Amnesty International, Albania: Government needs to take prompt action to ensure protection and respect for victims of domestic violence, 4 May 2012

<http://www.amnesty.org/en/library/asset/EUR11/005/2012/en/1f5e58ee-f4db-43c1-bbfe-313107a384f1/eur110052012en.pdf>

face difficulties finding housing and employment and retaining custody of their children.<sup>71</sup>

**See also:** [Actors of Protection](#) (Section 2.2 above)

[Internal Relocation](#) (Section 2.3 above)

[Caselaw](#) (Section 2.4 above)

**3.13.12 Conclusion.** There is societal discrimination and violence against women in Albania particularly in the north of the country and women who are unemployed, less educated and living in rural areas are seen as more vulnerable to violence. In some cases the authorities are unlikely to be able to offer sufficiency of protection. However, the Government has passed legislation that outlaws discrimination against women and women are not excluded from any employment or occupation. In addition, there are also a number of NGOs who work to promote women's rights and campaign against discrimination and violence. Most claimants will be able to internally relocate to escape localised threats from members of their family, but the reasonableness of internal relocation must be assessed on a case by case basis taking full account of the individual circumstances of the particular claimant.

### **3.14 Gay men and lesbians**

**3.14.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution as gay men, lesbians, bi-sexual or transgender persons in Albania.

**3.14.2 Treatment.** The law prohibits discrimination against lesbian, gay, bisexual, and transgender (LGBT) individuals. However, no official claims of discrimination have been filed, and the government has not had an opportunity to enforce the law. Despite the law and the government's formal support for LGBT rights, homophobic attitudes remained. On 23 March 2012, the media erroneously reported that LGBT activists were planning a pride parade in May. Deputy Defense Minister Ekrem Spahiu responded to the announcement, stating, "My only commentary on this gay parade is that the organisers should be beaten with clubs." The international community, civil society, and many citizens criticized the remarks. However, public demonstrations, some political leaders, and religious organisations supported Spahiu's comments. On a television program a few days later, another member of Spahiu's political party told openly gay activist Kristi Pinderi, "If you were my son, I would put a bullet in your head." The government reiterated its support for the LGBT community, and Prime Minister Berisha stated that LGBT activists would be permitted to organise a public demonstration according to their legal rights. The state police coordinated with LGBT organisations and provided effective security for several LGBT-related events during 2012.<sup>72</sup>

**3.14.3** According to the EC in their 2012 Report, moderate progress was made regarding the implementation of anti-discrimination policies. In April 2012, the Office of the Commissioner for Protection from Discrimination (CPD) launched a strategic plan

<sup>71</sup> Immigration and Refugee Board of Canada: Domestic violence, including legislation, state protection, and services available to victims; access to employment and housing for victims, 6 October 2011

<http://www.unhcr.org/refworld/docid/4f5f216a2.html>

<sup>72</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dld=204254>

for 2012-15 and an action plan for 2012. The CPD focused on capacity building and awareness-raising and was consulted on draft legislation. Public knowledge of the Law on Protection from Discrimination and awareness of the right to appeal to the CPD remained low. There remains under-reporting of potential cases of discrimination.<sup>73</sup>

- 3.14.4** An inter-ministerial working group, with civil society participation, has drafted a plan of measures for non-discrimination on the basis of sexual orientation and gender identity 2012-2014. NGOs ran a training course on the rights of LGBT for public administration and a diversity festival was organised by civil society and financed by donors, with the presence of the State authorities, in Tirana on 17 May 2012, to mark the International Day against Homophobia and Transphobia. LGBT persons continue to suffer from discrimination and difficulty in accessing social and health services, notably for transgender persons.<sup>74</sup>
- 3.14.5** According to Balkan Insight, July 2012, while Albania's Parliament decriminalised homosexuality in 1995, more than a decade and half later gays and lesbians are still heavily stigmatised. Most gays and lesbians still conceal their true sexual orientation, fearing that if it was discovered, their safety would be comprised. Human rights reports on Albania say ingrained attitudes among the general public leave gays and lesbians stuck on the fringes of society.<sup>75</sup>
- 3.14.6** According to human rights observers, LGBT people in Albania are subject to "intolerance, physical and psychological violence". Balkan Insight reports that in September 2009, a transgender person was stabbed to death in Tirana. The LGBT Rights Activist also reported a case where a gay man was in hiding for one and a half years because of death threats made by his family and a case where a woman was beaten by family members and then confined to her home when they discovered that she was a lesbian. The LGBT Rights Activist also noted that much of the mistreatment and violence faced by LGBT people is not documented and that services for LGBT people in Tirana were very limited and there were no social support or counsellors for people facing difficulty. There were no LGBT organisations outside Tirana and the current LGBT organisations had little capacity to do outreach beyond Tirana and the situation for LGBT people in these areas was described as "bleak". The LGBT Rights Activist expressed the opinion that someone facing threats because of his or her sexual orientation would have difficulty finding security in a different region or city of Albania. In her view, Albania was a small country which was 'intensely social networked,' and people were identified by their accents and recognised through connections with their hometowns and families. She believed that it would be difficult for someone to remain anonymous and find a way to make a living, since unemployment was high and most jobs were found through social connections rather than based on merit. This information could not be corroborated by the sources consulted by the Research Directorate.<sup>76</sup>

<sup>73</sup> European Commission, 2012 Albania Progress Report, 10 October 2012 P.20

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

<sup>74</sup> European Commission, 2012 Albania Progress Report, 10 October 2012 p.20

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

<sup>75</sup> Balkan Insight – Albania All Set For First Gay Pride in 2013 July 2012

<http://www.balkaninsight.com/en/article/albania-gay-rights-activists-plan-pride-event-in-2013>

<sup>76</sup> Immigration and Refugee Board of Canada, Albania: Situation and Treatment of Homosexuals - 28 September 2010

<http://www.unhcr.org/refworld/country,,,ALB,,4dd10e342,0.html>



**3.14.7** ILGA notes that during 2011 there were various cases of homophobic and transphobic violence reported. Members of the trans community in particular found themselves to be a target of young people, the police, and customers (when they are sex workers) on a regular basis. Throughout 2011 there were reported cases of police violence against LGBT people either on the streets or at police stations, as well as refusals by the police to record crimes committed against LGBT people when they tried to report them. Various cases were reported to the Commissioner for Protection against Discrimination. In August 2011, police officers seriously assaulted a transwoman in Tirana whilst investigating the theft of a necklace in a park. In October 2011, a gay couple from Tirana were attacked by the brother of one of the victims, who also threatened to kill them. They reported the case to the police but when they explained the context, police officers ridiculed and insulted them because of their sexual orientation and detained them for 10 hours, rather than taking a statement and treating them as victims. With the help of Pink Embassy/LGBT Pro Albania they filed a complaint with the Commissioner for Protection against Discrimination.<sup>77</sup> According to Freedom House, “bias against sexual minorities in society and by law enforcement officials remains strong”.<sup>78</sup>

**See also:** [Actors of Protection](#) (Section 2.2 above)

[Internal Relocation](#) (Section 2.3 above)

[Caselaw](#) (Section 2.4 above)

- 3.14.8 Conclusion.** Caseworkers must refer to the Asylum Instruction on sexual orientation and gender identity in the asylum claim.
- 3.14.9** There is societal discrimination and incidents of societal and police violence against the LGBT community in Albania and the police may not be able or willing to offer sufficient protection in all cases. Each case must however be examined on its own merits.
- 3.14.10** There are likely to be difficulties in finding safety through internal relocation. The law provides for freedom of movement within the country and Government generally respects this right in practice. However, in a country such as Albania, where homophobic attitudes are prevalent across the country, it may not be a viable option to escape any ill treatment. In addition, the Supreme Court in the case of *HJ (Iran)* made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.
- 3.14.11** If there is a real risk that a gay man, lesbian, bisexual or transgender person, or those perceived as such, will, on return to Albania, face a real risk of discrimination and violence, to the extent that this would amount to persecution, then they should be considered to be members of a particular social group and should be granted asylum.

<sup>77</sup> ILGA Europe, Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2011, May 2012, *Albania* [http://www.ilga-europe.org/media\\_library/ilga\\_europe/publications/reports\\_and\\_other\\_publications/annual\\_review\\_2011/files/annual\\_review\\_2011](http://www.ilga-europe.org/media_library/ilga_europe/publications/reports_and_other_publications/annual_review_2011/files/annual_review_2011)

<sup>78</sup> Freedom House, Freedom in the World 2012: Albania, May 2012 <http://www.freedomhouse.org/report/freedom-world/2012/albania>

**3.14.12** However, if an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.

**3.14.13** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

### **3.15 Prison Conditions**

**3.15.1** Applicants may claim that they cannot return to Albania due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Albania are so poor as to amount to torture or inhuman treatment or punishment.

**3.15.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

**3.15.3 Consideration.** Prison and detention centre conditions varied widely, and older facilities fell far short of international standards, with unhygienic conditions, lack of many basic amenities, and mistreatment by guards and other prisoners threatened the lives and health of prisoners and detainees. Prison and detention centre conditions varied widely between facilities dating from the communist period and those opened after 1991 as well as between those under control of the Ministry of Justice and those under the Ministry of Interior. The Ministry of Justice operates prisons and long-term detention centres. Conditions in those facilities varied widely. Older facilities had inadequate sanitation, ventilation, lighting, health care, and access to potable water, while those built after 1991 generally met international standards.<sup>79</sup>

**3.15.4** Prisoners and detainees have the right to meet relatives, and meetings can occur up to four times per month for adults and up to eight times for juveniles. Prisoners and detainees are free to exercise their religion, and some facilities have special places for religious services. Prisoners and detainees are permitted to submit complaints to the ombudsman. Every penal installation has a mailbox in which prisoners and detainees are entitled to submit complaints without censorship. The ombudsman reported that this service was functional. The country did not use alternative sentencing.<sup>80</sup>

**3.15.5** Prisoners and detainees are entitled under the law to submit complaints to judicial and administrative authorities. Authorities investigated credible allegations of

<sup>79</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013

Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dldid=204254>

<sup>80</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013

Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dldid=204254>

inhuman conditions and documented the results of their investigations, although the results were not easily accessible to the general public. The Prisons Directorate maintained cooperation agreements with several NGOs and the ombudsman. Prisoners could meet confidentially with the ombudsman, the Prisons Supervisory Commission, or foreign and domestic human rights NGOs. However, NGOs reported that the government rarely took their suggestions seriously, and when confronted with reports of abuse, officials refused to investigate.<sup>81</sup>

- 3.15.6** According to Amnesty International Annual Report 2012, Inmates at Lezhë and Fushë-Krujë prisons went on hunger-strike in protest against poor conditions. The Ombudsperson criticized sanitation in some prisons and remand centres, citing squalid toilets, rodents, damp cells and the unhygienic preparation and distribution of food. The Ombudsperson also noted the poor quality of construction of recently built detention centres in Durrës, Kavaja and Korça. Remand centres and the Women's Prison in Tirana were overcrowded and prison medical services, especially for detainees with mental illnesses were inadequate.<sup>82</sup>
- 3.15.7** According to the EC some police holding cells which were in very poor condition have been taken out of use. However, some cases of ill-treatment and excessive use of force have still been reported and conditions in some prisons and police holding cells remain below standard. Despite the positive trend in this field, there are still reports that procedures for processing accompanied or arrested persons were not systematically observed. Cases of ill-treatment continue to be often handled through administrative rather than judicial procedures.<sup>83</sup>
- 3.15.8** The UN Committee Against Torture notes with concern that pre-trial detention continues to be excessively applied. The Committee is particularly concerned about the high number of reports of torture and ill-treatment during pre-trial detention, the length of pre-trial detention of up to three years, as well as reports of Courts often imposing pre-trial detention without justification. Furthermore, the Committee is also concerned at reports that persons who have been detained for long periods and whose rights have not been respected during pre-trial detention face difficulties in accessing justice and seeking redress.<sup>84</sup>
- 3.15.9** Progress has been made concerning the prison system, with continued implementation of training programmes, an increase in the activities offered to prisoners and a general improvement in the standards of treatment of detainees. Increased follow-up of the Ombudsman's recommendations has had a positive impact on detention conditions. Over recent years, several new penitentiary facilities have been built which need to be sustained through adequate maintenance budgets. Adoption of the regulation for penitentiary infrastructure planning is pending. Prisoners' living standards continue to vary according to the availability of food or equipment provided by their families. Installation of locked cabinets has improved confidentiality of personal medical data which needs to be ensured through continued training of prison staff on safeguarding detainees' right to privacy

<sup>81</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204254>

<sup>82</sup> Amnesty International Annual Report 2012 – Albania, 24 May 2012 <https://www.amnesty.org/en/region/albania/report-2012>

<sup>83</sup> European Commission 2012 Albania Progress Report, 10 October 2012 page 17 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

<sup>84</sup> UN Committee Against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, 26 June 2012, paragraph 16 <http://www2.ohchr.org/english/bodies/cat/cats48.htm>

and confidentiality. Progress on replacing individual padlocks, a safety hazard, with more modern systems is slow.<sup>85</sup>

- 3.15.10** The establishment of the Probation Service has had a positive impact on reducing overcrowding and preventing reoffending. Four new regional offices were open in January 2012 and plans for developing the Service, including hiring additional probation specialists, have been approved. This will help reduce the case-load per specialist and improve the functioning of the Service. The Law on Electronic Monitoring of Offenders came into force in April 2012 and a tender was launched to select an electronic monitoring provider. Continued over-use of pre-trial detention for low-risk offenders and juveniles remains a concern.<sup>86</sup>
- 3.15.11** The government allowed local and international human rights groups, the media, and International Committee of the Red Cross, as well as international bodies such as the Committee for the Prevention of Torture (CPT), to monitor prison conditions.<sup>87</sup>
- 3.15.12 Conclusion.** Whilst some prison conditions in Albania are poor, with overcrowding and a lack of food and medical care being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to Albania, a grant of Humanitarian Protection will not generally be appropriate. However, given the length of pre-trial detention where ill-treatment and excessive use of force does take place, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility, and the individual's age, gender and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

#### **4. Minors claiming in their own right**

- 4.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to and it is appropriate for the minor to return to them; or (b) there are adequate alternative reception and care arrangements. Caseworkers should refer to the Asylum Instruction: [Processing an Asylum Application from a Child](#), which is the main guidance document on UASC return consideration.
- 4.2** Caseworkers should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

<sup>85</sup> European Commission 2012 Albania Progress Report, 10 October 2012, page 17

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

<sup>86</sup> European Commission 2012 Albania Progress Report, 10 October 2012, page 17

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/al\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/al_rapport_2012_en.pdf)

<sup>87</sup> US State Department Albania Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dld=204254>

- 4.3** At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Albania. Those who cannot be returned should be considered for leave as a UASC as set out in the relevant [Asylum Instruction](#).

## **5. Medical Treatment**

- 5.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).
- 5.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 5.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 5.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 5.5** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

## **6. Returns**



- 6.1** There is no policy which precludes the enforced return to Albania of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 6.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 6.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [Chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 6.4** Albanian nationals may return voluntarily to any region of Albania at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 6.5** The AVR scheme is implemented on behalf of UKBA by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Albania. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Albanian nationals wishing to avail themselves of this opportunity for assisted return to Albania should be put in contact with Refugee Action Details can be found on Refugee Action's web site at: [www.choices-avr.org.uk](http://www.choices-avr.org.uk).

**Country Specific Litigation Team  
Operational Policy and Rules Unit  
Operational Systems Management  
Home Office  
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