



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04883/2017

THE IMMIGRATION ACTS

Heard at Field House
On 23 January 2019

Decision & Reasons Promulgated
On 28 February 2019

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

UD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Smith, Counsel, instructed by Oaks Solicitors (Rowlandson House)
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Albania. Her date of birth is 13 May 1982. Her asylum application was refused by the Secretary of State on 11 May 2017. Her appeal was dismissed on 8 December 2017 by the First-tier Tribunal (“FTT”). I set aside the decision of Judge of the FTT NMK Lawrence on 23 October 2018, having found a material error of law for the following reasons:

“6. I will give brief reasons why the judge materially erred. He failed to engage with the evidence in this case. The Appellant prepared a very full

and detailed witness statement comprising 27 pages in which she described not only serious and significant domestic violence towards her and her children, but failed efforts that she made through the police and judiciary in Albania to protect herself and her children. Her evidence was that she would be at risk on return. The judge did not properly engage with this evidence. He failed to provide adequate reasons why the Appellant was not at risk on return. At paragraph 9 of his decision when identifying the issues, he did not identify risk on return as a matter for him to decide. The judge failed to engage with the extensive background evidence relating to Albania relied on by the Appellant. Furthermore, consideration of sufficiency of protection is flawed for the reasons identified in the grounds and the failure of the judge to properly consider risk. In addition, the judge did not make clear unequivocal findings, in relation to the children's best interests, properly taking into account, the evidence of the independent social worker and the evidence of the Appellant about how her husband's violence impacted on them.

7. In the light of the indication by the parties that the issues are narrow, it having been agreed by the Secretary of State the Appellant was the victim of domestic violence, in my view the matter should remain in the UT. The hearing was adjourned. The matter will be reheard, on a date to be notified not within 8 weeks (Ms Smith indicated her instructing solicitor's intention to instruct a country expert). None the findings of the FTT are maintained".
2. The resumed hearing was listed on 23 January 2019. The Appellant submitted a large quantity of further evidence as well as relying on the evidence that was before the FTT. The evidence relied on by the Appellant comprised documents that she submitted with her application for asylum which are to be found in the Respondent's bundle (RB) which unfortunately were not replicated in any of the various bundles subsequently submitted by the Appellant's solicitors on her behalf. There was a bundle (AB1) which was before the FTT comprising 165 pages including the Appellant's witness statement and a letter from her daughter ("N"). In addition, within that AB1 there are the country guidance cases of TD and AD (Trafficked women) CG [2016] UKUT 92 and DM (Sufficiency of Protection, PSG, Women, Domestic Violence) Albania CG [2004] UKIAT 00059. There is a second bundle (AB2) which was not before the FTT. This comprises 235 pages and includes a report by Stephanie Prempeh an independent social worker of 20 June 2017, and a psychologist's report of 8 August 2017 prepared by Dr Roxanne Agnew-Davies and Matthew McDonnell. There is a supplementary bundle (AB3) which comprises 127 documents and includes Ms Smith's skeleton argument and the country expert report of Antonia Young of 13 January 2019. In addition, within AB3 various decisions of courts in Albania and in response to my direction a chronology relating to events in Albania.
 3. At the hearing Ms Smith submitted the cases of Bagdanavicius & Anor, R (on the application of) v Secretary of State Home Department [2003] EWCA Civ 1605 and IM (Sufficiency of protection) Malawi [2007] UKAIT 0071 and R (on the application of) Agyarko and Ikuga v Secretary of State for the Home Department [2017] UKSC 11.

4. Mr Lindsay relied on the RB and the Reasons for Refusal Letter (RFRL) of 12 May 2017. He also submitted a copy of the Country Policy and Information Note (CPIN) Albania: Domestic abuse and violence against women, Version 3.0, December 2018.
5. It was agreed at a previous hearing, and it was confirmed before me, that there were no credibility issues relating to the Appellant's account. Her account in its entirety was accepted. Following this it was not necessary for her to give evidence and the case proceeded by way of submissions only, the issue being sufficiency of protection and relocation. However, to understand my decisions in respect of relocation and sufficiency of protection it is necessary to set out the Appellant's evidence. In this respect I was not assisted by her extremely lengthy and jumbled witness statement of 27 pages dated 12 June 2017. No attempt was made to record the Appellant's evidence in a methodical chronological manner. The chronology later submitted has assisted me to some extent.

The Appellant's Evidence

6. The Appellant attended school until the age of 14 or 15. She met her ex-husband (AK) when she was approximately 15. They married when the Appellant was 18, in December 1998. Throughout the marriage the Appellant suffered continual and serious psychological, physical and sexual violence. The Appellant catalogues rapes and physical violence on almost a daily basis. The couple's three children were all victims of domestic violence at the hands of their father.
7. The Appellant's parents stopped coming to their home as he was not welcoming towards them. She became isolated. Shortly after the Appellant's marriage her parents moved to the USA. Her neighbours could hear what was going on and there was gossip but no sympathy for her as it was considered normal for a husband to beat his wife. AK did not have a regular job and the family very often had no money for food. The Appellant was not allowed to eat without AK's permission. Her parents secretly sent her money.
8. The Appellant's first pregnancy ended in miscarriage. AK beat her because she spilt a glass of water. Initially he would not let her go to the hospital. About a week after the miscarriage she was able to escape and she made it to the hospital where she was told that the damaged foetus was stuck in the placenta. The doctors wanted her to stay in hospital for a few days. Her husband would not let her.
9. The Appellant had two paternal uncles in Kukes. One is now deceased. It was not possible for the Appellant to talk freely to family members because her husband would be watching her. She did on a few occasions seek refuge with an uncle when her husband had forgotten to lock the door. He would tell her that she must leave AK. AK would on these occasions promise to change. The Appellant was emotionally drained and felt powerless and would return home. She did not tell her uncle the full horror of her life. They did not see her injuries and wounds. AK would threaten her family too and she did not want to subject them to danger or become a burden on them. The Appellant knew that she could not stay permanently with her

uncle. It was not possible for him to take care of her. He had a meagre salary and lived in a one bedroom flat with his family. He was scared of the AK.

10. The Appellant's first daughter N was born on 10 December 2002. Her second daughter R was born on 19 January 2005. Her son M was born on 11 June 2007. Her husband did not like the girls. He reacted better to the birth of a son. All the children dislike their father. They remember a lot of violence. They would often go to bed hungry and they have all been assaulted by him. They had to wear long sleeves to cover bruises. AK put pressure on them not to say anything about what was happening at home. He would shake them and throw them when they were toddlers. If they spilt something he would force them to kneel and lick up the mess. When M was aged 7 AK hit him on the back and he stopped breathing. AK's uncle lived in the flat downstairs. They threw cold water on him. He eventually started to breath. She was never allowed to drop the children at school or collect them. She never met the teachers.
11. On one occasion the Appellant was beaten so badly that she lost most of her upper front teeth. She wears dentures. She has several scars on her head, hairline and eyebrows. Once AK grabbed her hair and bashed her head against a doorknob causing her to fall unconscious. Beatings were on the whole daily occurrences.
12. The Appellant first reported a matter to the police in May 2014 following an incident. Her parents were visiting from the USA. AK slapped her. Her father intervened. To calm the situation she asked her father and brother to leave. AK picked up an iron bar and waved it. The Appellant was trying to put the children to bed. AK went into N bedroom with a knife in his hand. N covered her face and screamed. The Appellant tried to calm him down. He said "I am going to kill the children and you first and then I am going to kill myself". The Appellant had a small Nokia phone that AK gave her to contact him. His uncle's details were on the phone. He lived downstairs from the Appellant and family. She texted him and then she rang him and left the phone on so that the uncle could hear what was going on. His uncle came up to the flat and calmed him down. At this point she knew the only way to keep the children safe would be to escape from him; however, she had no experience of the outside world or skills needed to survive on her own.
13. On 21 May 2014 she attended the police station and reported the incident. AK was questioned by the police. He tried to hit her in front of police officers and they intervened. She was asked to go to court directly from the police station. The court ordered an emergency protection order (PO). He had to leave the house. However, the final order in June 2014 allowed him to live in the same house subject to him staying two metres away from the Appellant at all times. The Appellant felt unable to return home following this. Her father, who was in Albania at the time, hired and paid a lawyer and for the Appellant and children to stay in a hotel. Her lawyer made applications to change the PO and he filed a divorce petition on her behalf. On 23 July 2014 the court eventually restored the original PO and she returned home. Her father installed a security lock.

14. Matters did not much improve because the Appellant was terrified to leave the house. AK would breach the PO. He would hang around outside. If she looked out of the window he would be there. Her father had to return to the USA in order to return to his work. AK tried to gain access to the flat and the children would panic. The Appellant could not go out alone. Once her father left she was not able to buy food without someone accompanying her. Her uncle was not able to help her. She had to rely on neighbours who were not very helpful because they did not want to get involved. The children's school was insecure and had no gates or boundaries. He threatened them. The Appellant returned to the police station and complained on many occasions on the advice of her lawyer. She tried to call them on the phone. The police took no notice of her. She was fobbed off. She managed to get an appointment on with a top police officer thanks to her lawyer, however, he was annoyed and not interested and said that he did not have time to deal with it.
15. There were many court hearings and her lawyer constantly argued that there had been a breach of the PO. Her lawyer told her that he felt helpless and did not know how to get the court and the police to enforce the PO. AK attempted to commit suicide in 20 June 2014 by cutting his wrists and throat. He was hospitalised and survived.
16. On 10 December 2014 the AK followed the children home and he grabbed N. She managed to escape. The Appellant called the police. No-one answered the phone. She attended the police station and registered the complaint. The police detained AK for two days. He was released without charge. N gave evidence in the family proceedings and the judge questioned why she would try to get her father put in prison and was angry with her. In court the Appellant's ex-husband would attack her in front of the judge. He threatened the Appellant's lawyer. AK attended with his own lawyer and his friend. He did not agree to a divorce. He behaved badly in court but he was never cautioned or reprimanded. The divorce was refused by Kukes District Court and so was the application for a further PO. The Appellant appealed to a higher court in Shkodre. She was granted a divorce in December 2014. However, the court refused to make a further PO.
17. After the divorce there was another court hearing about property. The Appellant was given custody of the children. However, AK was granted contact with them. The flat was divided between her and her ex-husband. In the end her father purchased the flat. The government gave a small sum of money to the children, however this went directly to AK who did not forward it on. He has never paid maintenance. The Appellant's family eventually ran out of money.
18. After the divorce AK's behaviour deteriorated. There was no PO. He continued to stalk her. He waited for the children and often followed them and made threats. He would show the children a knife and threaten to kill them. The Appellant was effectively imprisoned. The children lived in constant fear. The Appellant tried without successful to get the police to help. She had panic attacks. They all slept together in one bed because they were all too scared to sleep alone. Her husband

had told her on many occasions “Wherever you go I will somehow find you and kill you. Don’t think you can run away from me”.

19. The Appellant has never worked. She spent most of her life inside from the age of 16. She would not be able to survive in another part of Albania as a single woman with children. She is unwell and needs help. Her children are suffering psychologically. M is nervous and anxious and gets angry for no reason. He also has eating problems. Her daughters are doing well at school here despite the trauma. However, they are still frightened.

N’s evidence

20. There is a letter from N (AB1) of 11 June 2017 expressing difficulties that her family went through in Albania and the violence that she was subjected to at the hands of AK. She describes an incident when AK had a knife. She is happy here.

Court reports (Albania)

21. For the purpose of the proceedings in Albania on 24 June 2014 the Albanian Department of Social Services prepared a report. There is a second report “a psychological evaluation” prepared on 7 July 2014. There are copies of these and translations in the RB. The translations are of a poor quality. However, they support the Appellant’s case and establish that the courts in Albania was aware of the violence against the Appellant and children and that they feel threatened. They support the Appellant’s account including that AK attempted to take his own life.

The medical evidence

22. Matthew McDonnell is an assistant psychologist for Domestic Violence Training Limited and his supervisor, Dr Roxanne Agnew-Davies, is a specialist in the field of impact of violence particularly domestic and sexual violence on women’s mental health. The Appellant attended a psychological assessment on 23 June 2017 and a semi-structured interview was conducted and a number of psychological tests. The Appellant was diagnosed as having chronic major depressive disorder of moderate severity and a severe complex and chronic form of post-traumatic stress disorder (PTSD) with dissociative features. Her risk of suicide was assessed to be minimal but it would escalate if she were obliged to return to Albania. The condition renders her vulnerable to the risk of further harm and exploitation and impedes her ability to manage situations of risk. She is a committed, responsible and caring parent. Her prognosis is poor because she is not fit to begin the specialist trauma work required. The insecurity of her immigration status undermines her mental health and specialist treatment is not appropriate until her safety is established. If her status were secure her prognosis would markedly improve. Her symptoms and difficulties would be exacerbated if she was returned to Albania.

The evidence of the social worker

23. Ms Prempeh concludes that the three children made serious allegations about physical and emotional violence that they experienced from AK and which she documents in her report and that they fear that they will be killed by him should they return. They have provided graphic accounts and may benefit from counselling. She concludes that the children will be of significant harm if they are removed from the UK to Albania. The author has prepared an addendum report on 28 November 2017, having had the opportunity to consider the psychological evidence relating to the Appellant. She concludes that a settled status within the UK is likely to have a positive effect upon the Appellant's mental health which would ultimately be conducive to the children's emotional, psychological and social wellbeing.

Country expert evidence

24. The report is extremely detailed. It was not served in accordance with the directions of the Tribunal. Mr Lindsay did not make an application for an adjournment but simply asked me to take the late submission of it into account. Mr Lindsay stated that he had not had the opportunity to read it, which was hardly surprising. The presentation of the report is of concern to me. The paragraphs are not numbered. In any event the content of that report is accepted in so far as it is consistent with the CPIN and country guidance. As Ms Smith appeared to concede, there was nothing of significance in the report which was not a matter engaged with in the CPIN or country guidance. The expert concludes that the Appellant and her children are vulnerable and that there would be no sufficiency of protection. Despite the passing of protective laws they lack implementation. The expert relies on the findings of the UT in TD and AD. She refers to the Appellant's attempts to approach the police who would not help her. The Appellant's explanation of the extreme difficulties she faced is plausible. Having been given POs, they did not prevent her ex-husband from finding and attacking her and her children. The Appellant's word counts for nothing in the face of others who are more powerful. The Appellant would not wish to draw further attention to herself or her situation for fear of further reprisal from either her husband, his friends or aunt, and that her perceived shame within her community would inhibit her from wishing to discuss her situation. The Appellant would fear that the police would contact the perpetrator, his friends or family and she would not have the confidence to attempt to approach the ombudsman in order to take up the issue.
25. The Appellant lacks social status and economic standing. She only attended primary school. She is deeply affected by traumatic experiences. In Kukes, which is an inland, rural region of northern Albania near the Kosovo border, people conform to traditional Kanun law. The Appellant's family have all emigrated leaving her without that important family support. She would be considered suitable prey for traffickers and her two teenage daughters would be highly vulnerable. She would have no family network to call upon. She would be treated with suspicion and an outcast. It would be difficult for her to relocate. There is freedom of movement in

Albania but without the benefit of a supportive family it would be severely curtailed. If she were to relocate she would have to register residence. Relocation would not assure protection. In order to assess any available shelter, it would be essential to go through the Social Services or the police. The police failed to help her in Kukes. She would be fearful of registering and thus alerting her ex-husband, his friend or his aunt, all whom she fears. It is likely should she return that one of those people or even a trafficker would find her sooner or later. Her ex-husband's close friend (G) works in the Kukes municipal offices and gossip is passed on. The rural and urban populations are based on networks of kin and neighbours in which literally everyone knows everyone. Because of the high reliance on personal family networks of support any Albanian person would be generally highly visible if dislocated from their local home place. Not only is it difficult to integrate and settle somewhere in Albania without previously existing and positive personal contacts and ties, but the whereabouts of anyone is easily identified. If she is returned to Albania she would feel compelled to lead a closed life as a means of survival. She would live in daily fear of being discovered and attacked by her own or her in-law families.

Submissions

26. The RFRL needs to be considered in some detail because it was extensively relied upon by Mr Lindsay. The Respondent's position is that the Appellant provided a consistent account of the domestic violence and the steps that she took regarding protection. The documents she produced were accepted. To summarise, it was accepted that the Appellant received ill-treatment and threats from her AK, his aunt and his friend. However, the Respondent's position is that the Appellant's claim is not one that engages the 1951 Convention because she is claiming asylum for a non-Convention reason.
27. The Secretary of State relied on DM (Sufficiency of protection) [2004] in asserting that the Appellant was not a member of a particular social group in Albania. Reliance was also placed on AM and BM (Trafficked women) Albania CG [2010] UKUT 80 and MK (Lesbians) Albania CG [2009] UKAIT 00036. The Appellant has immediate family members who despite no longer residing in Albania have assisted her. She has a good relationship with extended relatives and support from uncles in Albania. She has never been the victim of trafficking and it is not considered that she would be identified and targeted in Albania on the basis of her status as a single woman, and it is not considered reasonably likely that she would face treatment amounting to persecution.
28. The background evidence shows that there is a functioning police service in Albania, although this may be susceptible to corruption and that there may be corruption, inefficiency and incompetence on the part of individual members of the police. It is noted that after her divorce she did not seek assistance from the authorities. She should have continued to utilise the assistance available to her. The background evidence demonstrates the assistance that would be available to her on return. She has not established that the authorities would be unable or unwilling to protect her.

Internal relocation would be safe and reasonable. She has relatives there and has demonstrated considerable resilience to date.

29. In oral submissions Mr Lindsay agreed that the issues were sufficiency of protection and internal relocation. Mr Lindsay did not prepare a skeleton argument, he responded to Ms Smith's skeleton argument. The first issue he raised was that relating to DM. In his submission DM must be followed; it is good law which has not been overturned and the Tribunal is bound to follow it. TD and AD did not modify DM. The Appellant is not a member of a particular social group as a woman in Albania. In any event, it is the Respondent's position that there is adequate protection in Albania. TD and AD refers to trafficked women. There is sufficiency of protection and a clear indication of willingness to apply a proper set of rules to protect women. The Appellant has a strong support network. Her father purchased property for her. She did not take steps to sell the property and consider how long she would be able to survive in Albania on the proceeds of it. She would receive support from her uncle in Albania. She has access to support from the authorities and this could continue. There is a functioning police service which has engaged with the Appellant. She has access to assistance from the judiciary. She could have applied for a further PO after the divorce. There may be a lack of emergency provision in Kukes but this is the only area where the Appellant has attempted to access help. There may be less provision in Kukes generally but does not prevent her from accessing help outside Kukes. Social housing is available. Her basic needs would be met.
30. The Appellant has not shown that AK would reach her if she were to relocate to Tirana. I asked Mr Lindsay whether his case is that there would sufficiency of protection in the Appellant's home area. He said that there would be, but that this was not the "central plank" of the Respondent's case. He said that it would not make practical common sense for her to return to Kukes. The most sensible option in his view would be to relocate. Mr Lindsay addressed me in relation to support and integration in Albania and the services that would be available to the Appellant with reference to the CPIN. He submitted that there would be extensive support and facilities available, particularly in Tirana despite that the Appellant has no experience of independent work. In respect of mental health issues he referred me to 7.3.2 of the CPIN. He submitted that the shelters are normally equipped with psychiatrists and that the triage system outlined in the CPIN would mean that the Appellant can access specific support. She has not attempted to access these facilities and it is entirely reasonable to expect her to do so. AK is a non-state actor and there is no reason why he would be able to seek her out. In any event, there would be sufficiency of protection.
31. Mr Lindsay addressed me on Article 8 and submitted that the family could return together to Albania. The family does not have a significant private life here. The starting point is that it would be in the children's best interests to remain with their mother. They are all Albanian nationals and the public interest in removal outweighs their right to private life. The Appellant is financially soluble.

32. Ms Smith made submissions. She relied on her skeleton argument and made oral submissions expanding on the arguments contained therein. Her argument in relation to DM is that the Tribunal should decline to follow the decision because the reasoning is inconsistent with later and higher authorities. It is extremely doubtful that it could be considered good law. It was submitted that the approach in DM is inconsistent with Fornah v SSHD [2006] UKHL 47 with specific reference to the guidance at paragraph 15.¹ Miss Smith relied on Regulation 6(d) of the Qualification Regulations.²
33. The evidence shows that women in Albania have a position in society of inferiority and disadvantage because of the discriminatory attitude towards them. The Appellant has been unable to access adequate protection from the authorities as a result of this. Further, it is submitted that the Appellant engages the Refugee Convention for reason of imputed political opinion because her actions in seeking to challenge her husband's conduct via the courts and ultimately to leave and divorce him challenge the established patriarchal order.
34. Ms Smith submitted that the Appellant's ordeal has gone on for well over a decade, she referred to the seriousness of the incidents. Although she has engaged with the authorities, the police and the courts she has been failed by them. The authorities are unable to protect her. The police and the courts were of the view that it is sufficient that the Appellant is now divorced. Mr Lindsay has suggested no reason to suggest that AK has ceased to be motivated to pursue her. Reference was made to what the Appellant said in her interview at questions 167 and 168, namely that her husband would find her. She made reference to AK's friend (G) who threatened the Appellant. The court refused to renew the PO order because the view is that a divorce is sufficient. The court granted AK contact with his children despite being aware of the violence perpetrated by him. In relation to sufficiency of protection Ms Smith submitted that she does not have to establish a systemic problem and she referred me to paragraph 55 (6) of the judgement in Bagdanavicius where the court stated that a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his

¹ "A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.

... sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently to men".

² "(d) a group shall be considered to form a particular social group where, for example:

- (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society".

case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require.³

35. This is a particularly exceptional case where sufficiency of protection must be considered in the context of the persistence by AK. I was referred to TD and AD, specifically to paragraphs 113 and 114.⁴
36. It is conceded by the Appellant that there is formal equality before the law for men and women but despite legislative advances the rate of domestic violence remains extremely high. The challenge is not that there is an absence of legal rules against domestic violence but that there is a lack of efficient application of them.
37. Reliance was placed on the expert's report, at page 26, which establishes that the police routinely fail to take requests for protection seriously. There is no emergency shelter in Kukes and there are no shelters offering long term support in that area. Reference in this respect is made to the expert evidence. The Appellant in this case was willing to approach the authorities but they have shown themselves unwilling or unable to provide protection in the particular circumstances of her case. Whilst

³ "Summary of conclusions on "real risk/sufficiency of state protection

The common threshold of risk

55. 1) The threshold of risk is the same in both categories of claim; the main reason for introducing section 65 to the 1999 Act was not to provide an alternative, lower threshold of risk and/or a higher level of protection against such risk through the medium of human rights claims, but to widen the reach of protection regardless of the motive giving rise to the persecution.

Asylum claims

- 2) An asylum seeker who claims to be in fear of persecution is entitled to asylum if he can show a well-founded fear of persecution for a Refugee Convention reason *and* that there would be insufficiency of state protection to meet it; *Horvath*.
- 3) Fear of persecution is well-founded if there is a "reasonable degree of likelihood" that it will materialise; *R v. SSHD, ex p. Sivakumaran* [1988] AC 956, per Lord Goff at 1000F-G;
- 4) Sufficiency of state protection, whether from state agents or non-state actors, means a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well-founded fear; *Osman, Horvath, Dhima*.
- 5) The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event; *Horvath; Banomova. McPherson and Kinuthia*.
- 6) Notwithstanding systemic sufficiency of state protection in the receiving state, a claimant may still have a well-founded fear of persecution if he can show that its authorities know or ought to know of circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require; *Osman*.

⁴ "The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event. Notwithstanding systemic sufficiency of state protection in the receiving state, a claimant may still have a well-founded fear of persecution if she can show that its authorities know or ought to know of circumstances particular to her case giving rise to her fear, but are unlikely to provide the additional protection her particular circumstances reasonably require".

the Appellant obtained a PO on 21 May 2014, AK was permitted to return to the home by further order. The order was reinstated on 23 July 2014 but it was later discharged once the Appellant had obtained a divorce on 18 December 2014. She was left without any protection.

38. A divorce is not adequate protection for victims of domestic violence. The Appellant's husband frequently and seriously breached the PO with impunity. The CPIN confirms that there are serious difficulties with the enforcement of POs and they are largely ineffective. AK has never been prosecuted for the substantive offences he committed against the Appellant including an attempt to attack her in the presence of police officers. The Appellant engaged the services of a lawyer and made a complaint to the most senior officer in Kukes. The Appellant suspects that AK may have influenced the judicial process. There are levels of corruption in the police and judiciary, referred to in the expert evidence and supported by the conclusions of the Upper Tribunal in TD and AD at paragraphs 93 and 94.
39. The legal system failed because of corruption, inefficiency or because of a deeply ingrained discriminatory attitude towards women. However, it does not really matter the reasons for the failure to protect her, it is the outcome that is critical. There is no sufficiency of protection in Kukes and there is no sufficiency of protection generally. My attention was also brought to the fact that AK has been granted contact with his children despite the court and the police being aware of the facts.
40. Single women attempting to relocate in Albania face significant obstacles and whether internal relocation is available will depend on all the facts. I was reminded of Section 55 of the Borders, Citizenship and Immigration Act 2009. Relocation is not reasonably available to the Appellant. She is from northern Albania. Whilst her immediate family has been supportive they have rendered help from abroad. She has no family members in Albania to assist save one elderly uncle who was unable to protect her previously. She will not be able to access either government or NGO shelters for assistance. She was able in 2014 to access a state-run shelter for one night only when her husband breached the PO. After one night she was told to leave. The background evidence shows that shelter provision is inadequate and significantly it is open to women with POs in place or being applied for. She has been refused a further PO.
41. The Appellant has no experience of working outside the home at all. She has severe complex and chronic post-traumatic stress disorder and chronic major depressive disorder of moderate severity. She has three dependent children who are also traumatised by witnessing and being victims of domestic violence. It would not be in the children's best interests to return to Albania. Many of the factors in TD and AD apply to the Appellant. She is vulnerable and has profound mental health problems; she will face stigma and has no family ties in Albania; she is poorly educated and as a divorced single mother will require support which will highlight her vulnerable position leaving her vulnerable to trafficking, harm and exploitation. AK has warned her that he would be able to find her wherever she went. He has attempted suicide which, according to the psychological evidence, is an indicator in family homicide. If

she were to make an application for a further PO, her husband would become aware of her whereabouts. The Appellant would be returning to Albania as a single woman without family support and this would necessarily affect her ability to find work and survive. Further, she may be discovered in a small country where people talk to each other.

Conclusions

42. There was no meaningful challenge to the report of the independent social worker and the psychologist's report. I accept the conclusions found by these professionals. I find that the Appellant has chronic major depressive disorder of moderate severity and severe complex and chronic PTSD. I find on return a risk of suicide would escalate.⁵ I find that she is vulnerable and that her symptoms would deteriorate on return.⁶ I find that because of her vulnerability and mental health, she would not be able to cope with and adapt to life in Tirana or elsewhere in Albania.⁷

⁵ The psychologist's report summarises the author's opinion at paragraph 4 and details the Appellant's vulnerability and the following is stated:

"In other words, victims accustomed to freezing rather than 'fighting/fleeing' become trapped in situations even when they are at risk of further harm and do not effect change, protest or escape even if this were a possibility. Compliance and inability to escape is particularly common in women who have been subjected to sexual exploitation and physical control over a protracted period (Zimmerman et al, 2006). In common with other victims, and already demonstrated by her history of compliance and subjugation, [UD] is much more likely to become helpless and submit and/or contemplate suicide when threatened because she lacks adequate resources to take adaptive, appropriate action (2.2: 5-6). Dissociation such as this is always associated with higher levels of psychosocial vulnerability (Adams & Bracha, 2004)".

⁶ See the psychologist's report at 4.5.2 which reads:

"Due to the severity and extent of her psychological problems, [UD] is very ill-equipped to cope with any major disruption; her psychological profile significantly reduces her capacity to cope adaptively with any situation of stress or fear. To add to her instability by placing her in a situation in which she is or perceives herself and her children to be at greater risk (2.2.36; 3.5.3; 3.8.10) would lead to an upsurge of all trauma related symptoms and vulnerabilities described over Sections 4.1 and 4.2, respectively."

⁷ See the following paragraphs of the psychologist's report:

"4.5.2 Due to the severity and extent of her psychological problems, [UD] is very ill-equipped to cope with any major disruption; her psychological profile significantly reduces her capacity to cope adaptively with any situation of stress or fear. To add to her instability by placing her in a situation in which she is or perceives herself and her children to be at greater risk (2.2.36; 3.5.3; 3.8.10) would lead to an upsurge of all trauma related symptoms and vulnerabilities described over Sections 4.1 and 4.2, respectively.

4.5.3 It is perhaps worth pointing out that [UD's] psychiatric status depends on her psychological perceptions and responses, rather than objective fact. I am not in a position to comment upon the objective risk upon return to Albania, which is a matter for a country expert, but as outlined over Section 4.2, from a psychological perspective, if she finds herself in a situation in which she feels threatened, experiences rejection, perceives herself to be surrounded by hostility, or that she and her children are in imminent danger, the consequent mental and emotional experience would be sufficient to trigger overpowering intrusive memories, dissociation, arousal and intensive affect dysregulation, as well as self-harming behaviours.

43. Sufficiency of protection and relocation must be considered in the context of the acceptance by the Respondent of the Appellant's evidence. Her account is of serious and life - threatening abuse on her and her children by her ex-husband. I find that the Appellant would be at risk on return to Kukes. I find that the legal system has failed to protect her. There can be no other finding considering the evidence. The court in Kukes failed to agree to a divorce. Despite a PO having been granted on 21 May 2014 by the local court in Kukes excluding AK from the family home, this was not properly enforced by the police. In any event, this order was not renewed or amended, enabling him lawfully back into the family home. In the light of the serious nature of his behaviour and the obvious level of risk, to allow him back into the family home was wholly irrational. Although the PO was re-instated on 23 July 2014, once a divorce was obtained on 18 December 2018, the Appellant was left without protection. It may have been assumed by the court that now she was divorced protection was no longer needed. However, this was clearly misconceived because the abuse and threats continued. The Appellant's efforts to contact the police were of no help to her and it is no surprise that she gave up seeking help from the authorities after this point. Despite being conversant with the history in this case the higher court would not grant a PO. For whatever reason the court may have given, there was no logical or rational conclusion, particularly in the light of the court reports, why the court took the view that the Appellant and her children no longer needed protecting. Furthermore, it is a mystery why the higher court permitted the perpetrator of serious child abuse and domestic violence contact with his children.
44. When there was a PO in force it did little to deter AK. He continually breached the order. It was largely ineffective. The police were not committed to helping the Appellant and the courts, aware of the violence, ultimately failed to protect her.

4.5.11 In summary, I anticipate that [UD's] psychological problems and distress would be significantly exacerbated if she returned from the UK, where she feels safe (3.3.3), to Albania. This deterioration in her already fragile psychological health would have very negative consequences for her already impaired capacity to cope with independent living and parent her children, as well as increase the risk of suicide. The absence of intensive, appropriate psychological treatment and loss of professional support would be likely to further endanger her mental health in the short, medium and long-term. Furthermore, removal to Albania would endanger [UD] and her children given that [AK]'s previous suicide attempt and repeated threats to kill [UD] and their children is regarded by domestic violence specialists a significant risk indicator of family homicide (2.2.27).

4.5.12 Since social support is a major prognostic indicator, the absence of a robust and safe professional and social support system, along with the risk that she perceives negative judgement from the wider community would be highly deleterious. If [UD] is driven further into social isolation, this would increase the risk of significant deterioration in her mental health. In short, I believe that [UD]'s current psychological profile and psychosocial vulnerability place her at much greater risk should she be threatened with return to her country of origin, than a person who has not suffered from mental health problems and has not experienced such severe abuse".

45. AK was not punished for his crimes. On the occasion he was detained by the police for two days, he was ultimately released without charge. Whilst the authorities cannot be blamed for AK's tenacity and propensity for violence, they did not protect the Appellant or her children. In the light of the history of the case, the Appellant could not be expected to continue to try to seek protection of the police and the courts because they had shown that they were unwilling or unable to protect her and her children.
46. The inevitable conclusion is that the Appellant would be at risk on return to Kukus and there would be no sufficiency of protection available to her there. I have of course taken on board Mr Lindsay's submissions about sufficiency of protection. I accept that the CPIN establishes that there is a police force and law enforcement available in response to violence against women.⁸ There is a system available. What

⁸ CPIN at 5.3;

"Police

5.3.1 The GREVIO report of November 2017 stated:

'Based on its interviews with those working in this area, GREVIO finds that satisfaction levels concerning the law enforcement's response to violence against women stand generally high. The setting up, at police departments, of special units to handle domestic violence cases, together with consistent initial and on-going quality training are credited for ensuring that law enforcement officials treat violence against women as seriously as any other violent offence. GREVIO welcomes the indication in the state report that more and more women are joining the police, thus increasing the possibility for victims to be heard by women police officers. GREVIO recalls in this respect that compliance with the obligation laid down in Article 50 of the Convention requires inter alia providing for an adequate number of female law enforcement officers, including at high levels of responsibility. It further requires hearing victims without delay by specially trained, and where appropriate female, staff in premises that are designed to establish a relationship of trust between the victim and the law enforcement personnel. This is an area where GREVIO finds that improvements could be made by ensuring the presence of trained professionals, including women psychologists, in police districts and providing them with adequate facilities for accepting victims and their children.'

5.3.2 The USSD HR Report 2017 noted that, 'Police often did not have the training or capacity to deal effectively with domestic violence cases.'

5.3.3 The HO FFT stated, 'Josif Shtembari, the Director for Crimes, at the General Directory for Police in Tirana noted that the new law, introduced in 2007, had created an organised structure to tackle the problem of DV. This legislation set out a structure with coordination between the local police office, district police office, social services and NGOs in the particular region. [...] Since 2006, an entire chain of law enforcement institutions follow up on incidents of DV.'

5.3.4 The HO FFT further reported:

'Josif Shtembari [...] described the process for dealing with claims of DV once the victim has notified the police:

- The police officer looks for visual signs of physical injuries
- The victim is referred immediately to a doctor who will make a report
- Either a claim is made to a court for a PO, or
- Proceedings are started for further evidence and the case is referred to the Prosecutor's Office

- Once sent to court an urgent PO will be decided in 24 hours, others take up to 15 days

'The law requires that when a VDV [victim of domestic violence] is interviewed by the police a psychologist or social worker is present.

'Mr Shtembari told the FFT that the police will take control of the scene of violence looking for weapons, as well as photographs or videos of it, and they will also talk to witnesses.

'He said that the police regard the moment the person makes a declaration as the crucial point in the case and they recognise that the victim may be in shock when they first arrive at the police station so they have tried to create a friendly environment in which victims can make their statement.

'Mr Shtembari told the FFT that any person who has knowledge of violence or crime must report it. This can be neighbours but this does not happen very often. Usually it is member of the family, and in particular the victim themselves.

'Mr Shtembari noted that the Albanian law does not provide that the victim can have a copy of the police report but a record of court proceedings is available. CLCI said the police are obliged, by law, to give a copy of the law-suit to the victim, although they often don't.

'Mr Shtembari further noted that if the person withdraws her claim, it usually stops there but if the person is subject to repeated violence, the police will continue with the investigation. If the case was initiated by the court, then it continues until the court decides the outcome.

'He said they do not have a figure for the number of cases that are withdrawn. It usually happens at the court, when the person doesn't show up, or at the Prosecutor's office.'

5.3.5 The HO FFT also spoke to the Police Department in Kukes, a town in the north-east of the country, and reported:

'The Kukes Police Department confirmed the details given by Mr Shtembari, in that the law provides for a set practice on how to deal with VDV, and that they follow this in Kukes: "When the victim first comes, and they are usually women, there is a medical check if needed. Then it is referred to the psychologist under the municipal social services, if necessary. We emphasise very much the first moment of contact, or first communication with the victims to create a warm environment to make them feel confident, safe and if there is a need for medical treatment, we send them to the hospital.

"After the victim has come to us, we interview them in the presence of the psychologist and ask them about the incident, the background etc. After that, we fill in a form for a Protection Order and lodge it in court. Depending on the PO issued by the court, we either accompany the person to the Centre for VDV in Tirana, or to their accommodation and explain to the perpetrator his obligations under the law... The person gets a copy of the report. It is the right of the victim to read and get informed of what was written in the report. They get this automatically. It is a legal obligation and procedure to give a copy to the victim."

'The Kukes Police Department stated that the offence is based on the word of the victim and treated as "beating" and if the victim withdraws her case then the case is closed. However, in serious or high risk cases, they ask the community police officer to keep the case under close supervision as well as the specialist for DV cases in Kukes to have close contact with the victim and check how the situation has progressed. The community police specialist would also meet the perpetrator.'

5.3.6 The HO FFT also spoke to other stakeholders:

'The Director of Social Services in Kukes noted that there is a round-table committee on issues surrounding DV headed by the mayor of the municipality and that such a committee is required by law: "We are trying to coordinate our work with the police. Sometimes cases are referred to the municipality unit for DV; some are referred to the police. In most cases, the police doesn't follow-up these claims of DV to the prosecution office or to bring them to the

municipality office. They try to bring the conflicts to a close in their own way. In cases where the problems are very pressing, the police contact us and we [...] try to resolve them together.

“The head of DV unit has accompanied the women to court. They have to bring a complaint and apply for a Protection Order. In most cases, the police don’t have enough information and capacities to follow-up the cases in court. Because the administrator of the village (appointed by the municipality) doesn’t give enough information, it is mostly based on the victim’s allegations. This means that when the claim goes to court, there isn’t enough evidence to issue the PO. The court, most of the time, they tend to work on reconciliation between victim and perpetrator.”

‘The Director of the WCSSC in Kukes noted that there has been a change in the reporting of DV cases over time, and the victims now go more readily to the police, although often it is when they have reached breaking point. She said that she sometimes asks the prosecutor and the police to continue with cases, even where a woman withdraws her case.’

5.3.7 The HO FFT were also informed about trust in police and police attitudes:

‘Several sources noted that the number of reported cases of DV showed an increased awareness and increased trust in the police to investigate cases. The police are usually the first institution a VDV approaches. They are now more receptive to complaints and more likely to follow up on them; helping women get an EPO [emergency protection order] and PO; also advising them about how to pursue a case. The Albanian Ombudsman said every case referred to the police is followed up.

‘However, traditional values do impact on police thinking sometimes. Several sources commented that there have been cases where police have tried to negotiate with the victim to go back to the perpetrator of the violence. They said that there is still a lot to be done on capacity building, attitude changing and professionalism – and also enforcing POs properly. [...]

‘The FFT was told that sometimes the police take the side of the male, but that is not always the case, and is becoming less common.’

5.3.8 The FFT further reported on a meeting with the UN:

‘Whilst recognising that the government has made efforts to increase the capacities of the police, and making clear that the role of the police in the fight against violence has improved over the last year, the UN stated that the professionalism of the police varies a lot, and that they have supported the Police Academy to update their curriculum. [...]

‘The UN also noted that a positive development is the amendment to the criminal code which includes provisions for the protection of victims of gender-based violence and human trafficking. In particular, the new provisions require that that victims of sexual violence and human trafficking communicate with the same gender officers. The new amendments have been in force since July 2017.’

5.4.1 The GREVIO report of November 2017 stated:

‘GREVIO welcomes the introduction in the LDV of a mechanism to provide victims of domestic violence with court orders shielding them and family members from immediate threats to their security, health or well-being. Available data show that that the mechanism is widely used and that victims are willing to seek the protection it affords, regardless of whether or not they pursue other legal proceedings. [...] The judicial decision pronouncing an EBO [emergency barring order] or PO constitutes an executive title from the moment it is adopted and is thus immediately enforceable.’

5.4.3 The HO FFT also spoke to the Tirana Family Court, who explained the procedure for obtaining a protection order:

is in the CPIN which was relied on both parties, fits in with what the Appellant states happened to her in Kukes. She sought help and she was given some form of protection. However, she was not ultimately protected from AK. Whilst her evidence about what happened in Kukes is accepted, it is worth highlighting the limitations of law enforcement and the judiciary. Professionalism of the police varies.⁹ Although a PO may be easy to obtain, as a long-term protection it may be more of a challenge and there are problems with the effectiveness of a PO generally.¹⁰ In addition shelters outside Tirana are limited and help in rural areas more difficult to access.¹¹

'As per Albanian law, the courts start from the rule of law principle. The judges start from the criteria within the provision of the law. There is not any concrete or specific requirement to provide specific proof; it comes from the police or the victim.

'Usually the first phase when protection is given, on the file there is data or reports or statements or evidence from the police, third parties or the victim. Can also be visual proof.

'It has two phases: Urgent, to decide whether to have a PO based on the proof that is on the file. Second, further information - phone calls, medico-legal reports, more info from police possibly on perpetrator - then they decide on what to do.

'90% accepted at the first stage. Then investigate further.

'As well, during the 2nd stage, is a request given to the police to provide a psychological report in the case of minors. This is to determine whether to apply a stronger reaction from the court if necessary.

'Also, a source for getting proof of the violence is the Social Services Office, and also the statements of the other family members. But this latter one is a problem, given the strong family ties that exist here in Albania. Depending on the full access and the statements on the file will determine how long the PO will remain in place. There are also cases where the victim is a repeat person, and the length of time is one year. Sometimes the evidence is not so strong, but the judge believes that the person is a victim, in which case they give a shorter time (e.g. 3 months).

'The Ministry for Health and Social Protection said the main stakeholder is the local courts and once the proceedings have taken place, a copy of the order is sent to the victim, the police and the local municipality social services.'

⁹ CPIN at 5.3.7 "The HO FFT were also informed about trust in police and police attitudes:

'Several sources noted that the number of reported cases of DV showed an increased awareness and increased trust in the police to investigate cases. The police are usually the first institution a VDV approaches. They are now more receptive to complaints and more likely to follow up on them; helping women get an EPO [emergency protection order] and PO; also advising thout how to pursue a case. The Albanian Ombudsman said every case referred to the police is followed up.

'However, traditional values do impact on police thinking sometimes. Several sources commented that there have been cases where police have tried to negotiate with the victim to go back to the perpetrator of the violence. They said that there is still a lot to be done on capacity building, attitude changing and professionalism - and also enforcing POs properly. [...]

'The FFT was told that sometimes the police take the side of the male, but that is not always the case, and is becoming less common.'

¹⁰ CPIN 5.7 **Protection orders: effectiveness**

5.7.2. The HO FFT reported:

'Many sources observed that a challenge in the area of DV is the violation and lack of enforcement of protection orders. Often the courts decide to leave the victim and the offender in

the same household for economic reasons which has led to further violence and, occasionally, murder.

'Courts blame the police for not enforcing the POs, whereas the police blame the courts for issuing POs that are not enforceable.

'The Social Services Department at the Municipality of Tirana commented that POs do work, but effective social services were needed to make that happen. Their opinion was that if a victim doesn't get support (including housing and a job) then it is difficult for a PO to be effective. Tirana has a lot of services, NGOs and international agencies to help people, but it is more difficult for people in the regions outside of Tirana which don't have these resources.

'The Tirana Legal Aid Society noted that lawyers are allowed to ask for a Protection Order: "A Protection Order is free of charge; but the expert is not free. This is why we are involved. We also cover the costs of judicial process. We ask for the most effective actions from the court. In some cases, I have asked for parental custody orders.

"[...] Once a person hasn't respected a Protection Order, it switches from a civil to a criminal matter. But it depends on whether it is reported. Don't really think these are effective. They need other things to accompany it. For example, if the person is to stay away from the other person, you need to provide that they can. Or, subsequent meetings should be supervised or monitored. But these don't happen often. And there is a problem with people being encouraged to report breaches of a Protection Order. When the cases are reported, the police are effective and do respond." [...]

'The Director of the WCSSC in Kukes stated that POs were a big step ahead and were really necessary but the infrastructure to implement them was not fully in place. She said the state is obliged to give women victims food, education, accommodation, employment, but they don't. However, POs were generally reviewed by women judges who have been very considerate.'

5.7.4 In November 2017, GREVIO noted:

'GREVIO has been apprised of a number of difficulties regarding the application of this mechanism [i.e. protection orders], which for the most part do not relate to deficiencies in the law but rather to its ineffective implementation. The major issue is the weakness of protection orders, such as those ordering the perpetrator to live in one part of the family dwelling leaving the victim to live in the other. Available reports explain these decisions in terms of "a combination of discrimination and pragmatism on the part of the judiciary" which is reluctant to leave the perpetrator homeless. Thus, considerations relating to the scarcity of housing and the low socio-economic status of the perpetrator have at times prevailed over the prime consideration which should underpin any decision to issue an EBO/PO: the victim's safety. Moreover, in taking this approach, rather than protecting the victim, protection orders have at times become the ante-chamber to more violence.'

5.7.5 GREVIO further stated:

'Other obstacles [besides victim and perpetrator remaining in the same house] standing in the way of an effective implementation of the EBOs/POs mechanism relate mainly to the lack of reactivity of responsible officials. These concern (a) the non-compliance with procedural deadlines, such as the 24 hour deadline to notify the victim, law enforcement, bailiffs and social services of the issuance of EBOs, or the absence of clear deadlines applying in case of appeals against the decision to issue an EBO/PO; (b) the scarce use by law enforcement and prosecution of their power to set in motion the procedure for the issuance of an EBO; (c) the failure of the responsible enforcement agencies, in particular bailiffs, to execute or to ensure the enforced implementation of EBOs/POs. GREVIO is further informed in this respect of cases where bailiffs have required payments from the victims in order to enforce EBOs or POs. Both perpetrators acting in violation of protection orders and officials failing to execute them can be held accountable under the relevant provisions of criminal law. Although the state report [drawn up by the Albanian authorities and submitted to GREVIO] offers data concerning the

47. I accept that there are shelters available to protect victims of domestic violence in Tirana.¹² They are limited elsewhere in Albania. From reading chapter 6 of the CPIN, it seems that a PO is necessary to obtain shelter, although there is reference to the setting up of shelters taking women without a PO.¹³ However, there is no evidence that these are up and running.

number of violation of protection orders, no information is provided as to the sanctions which might have been applied as a consequence thereof.'

- ¹¹ CPIN 6.1.4 The HO FFT further stated:

'Although women in the more rural and remote areas of Albania may find it difficult to access services locally, women who relocate to Tirana can obtain help and shelter there. Shelters are provided to house victims of domestic abuse (both state- and NGO-run) which: have sufficient capacity, are professionally run, have effective safeguards against being detected; and a re-integration programme to help women re-establish themselves into the community. Women are increasingly aware of the services available to them and how to access them.'

- ¹² CPIN 6.1

"Shelters: Numbers and location"

6.1.1 The USSD HR Report 2017 noted that, 'The government operated three shelters to protect survivors of domestic violence, and NGOs operated six others.'

6.1.2 The HO FFT stated 'There are four NGO shelters that can handle VoT [victims of trafficking] and two more specifically for VDV. [...] There are two shelters for VDV in Tirana, one of which is the state run National Reception Centre for Victims of Domestic Violence (NRCVDV). The Albanian Ombudsman stated that they have an inspection strategy, that they regularly inspected the national centres [...].'

6.1.3 The GREVIO report of November 2017 stated:

'In relation to the coverage and geographical spread of refuges, [...] there are currently 8 shelters offering safe immediate, short and long term accommodation to women victims of violence and their children, with a total of 153 beds. This places the provision of this sort of service at 137 beds short of the number required in accordance with the standards set out in the Final Activity Report of the Council of Europe Task Force to Combat Violence against Women, including Domestic Violence which recommended safe accommodation in specialised women's shelters, available in every region, with one family place per 10 000 head of population. The report acknowledges further that the concentration of shelters in the capital and in a limited number of other localities (essentially, Elbasan, Vlora and Shkodra) leaves a wide portion of the population, especially in rural and remote areas, without sufficient protection.'

- ¹³ CPIN 6.1.5

'The HO fact-finding report continued:

'The director of the NRCVDV told the FFT that there is a plan for another shelter for VDV (this is projected to be in the north part of Albania, but is not finally settled). The Ministry of Health and Social Welfare said that the government is undertaking a feasibility study to look at the possibility of opening three new shelters for VDV before 2020. However, the UN doubted the state had the budget for new centres, and felt they needed to consolidate what they had got.

'The shelters operate in close cooperation with each other to prevent over reach. Their combined capacity is sufficient to address the need from adults and there is no national capacity problem. The centre in Elbasan is just for children, which can house 15-20, and when it is full they are referred to orphanages. The Municipality of Tirana said they have a good relationship with the shelters, referring cases to each other. The Albanian Social Services confirmed this,

48. I have already referred to AK's tenacity and criminality. I have no hesitation in concluding that if he discovers the Appellant's return to Albania he will find her and the children. AK presents a serious risk to the Appellant and her children. I have no hesitation in finding that even without knowledge of their return he is actively trying to locate them. There is currently a court order giving him contact with his children. It can reasonably be inferred that by fleeing Albania the Appellant is in breach of this. It can be reasonably inferred that the law in Albania would expect the Appellant to facilitate contact in the light of the order. Whatever the case, the order gives AK a lawful and enforceable right to see his children and a very strong motive to locate them. The extant court order is reasonably likely to come to light, should the Appellant return. She cannot reasonably be expected to relocate and live in Albania in breach of a court order and she cannot reasonably be expected to return and facilitate contact.
49. On the basis that the Appellant and her children are fortunate enough to a secure shelter outside Kukes without having to seek a PO (which I do not think is reasonably likely) it is reasonably likely that eventually AK will find them. AK is determined. He has a level of support from family and a close friend and it is reasonably likely he will actively be seeking to enforce the court order giving him contact with his children. He has breached court orders with impunity. He has shown no self-control or fear of punishment. He is as hostile towards his children as he is to the Appellant. I have considered that Albania is a small country and what is stated in the CPIN at 8.7.¹⁴ Whilst the Appellant's sole surviving uncle attempted to

stating that an initiative created ten years ago by the Ministry of Interior effected cooperation between the state and the NGO run shelters.

'The shelters are licensed and regulated by the Inspectorate of Social Services so they must adhere to the official standards regarding the level and quality of care and the standard of security they provide for clients. The Human Rights Officer from the US Embassy thought the shelters were very good, particularly those run by the NGOs who are among the best civil society organisations in Albania. He commented that once the girls are there they are generally happy and well taken care of.

'The UN said it had worked with the government to set up the NRCVDV which now takes women without a PO. Several sources noted that the government now funded the salaries of staff in NGO shelters and there had been efforts to use the funds from confiscated, seized assets. The government also funds food and support for vocational training and health care. The Albanian Red Cross told the FFT that they support both VoT and VDV in shelters with such things as food, blankets, clothes and toys for children.'

¹⁴ CPIN at 8.7

"Civil registration and data security

8.7.5 With regard to whether the victim would be checked against the municipality record of her last place of residence, 'Social Services commented that her previous municipality would come to know that she had moved to Tirana if she asked for her registration to be moved there. If she were residing at a shelter in Tirana, there would be no need for her to do this, so her previous municipality would not be notified. [...] If the victim is accommodated at a shelter elsewhere in the country, their civil registration is not moved with them but stays at their original location. [...]

protect her, he was ultimately unable to do so. Her immediate family is abroad and unable to physically protect her. Her father has run out of funds to assist her. There is a real risk that she will be discovered by her extremely violent ex-husband and that she or her children could be seriously injured or even killed. This would put the Appellant and her children at risk.

50. The thrust of the Respondent's case is that the Appellant would be able to access a shelter and the facilities and protection that they offer to victims of domestic violence. However, whilst there are shelters available outside Kukes to those with a PO, it is less clear whether there is shelter for those without a PO. There was accommodation for the Appellant in a shelter for one night in Kukes; however, at that time there was a PO. Seeking a PO would lead to the disclosure of her return and it can be reasonably inferred that the starting point for the court considering whether to grant an order is that AK was granted contact. The court has refused to make a PO for whatever reason whilst conversant with the facts. It is difficult to see why they would now grant a PO without further violence, and even then, there is no reason to believe that one would be granted or that this would be effective. It is, in my view, not reasonably likely that the Appellant would be able to secure a shelter in Tirana or elsewhere in the absence of a PO and her position would then be even worse because there will simply be no meaningful support available to her.
51. Based on what has happened in the past, which establishes that the authorities have not, for whatever reason, managed to protect the Appellant and her children, and because of the extreme level of AK's criminality and failure to abide by a PO, I conclude that the authorities are unlikely to provide the family with the additional protection their circumstances reasonably require. There would be no sufficiency of protection for the Appellant and her children. I accept that TD and AD, applies, to a limited extent when considering access to protection.¹⁵

'However, if/when she eventually left the shelter she would then be required to move her registration to her new municipality within one month, and in any case would need to do so so that she could rent accommodation. At this point, her old municipality would be made aware that she had moved to Tirana's administrative area, though they would not be told her address within that area.'

8.7.6 With regard to whether a person can be traced anywhere in Albania, the State Police told the FCO that, '[...] Albania is a small country, some people may know each other and talk to each other, and they could not prevent people from encountering each other or seeing each other by chance. However, Albania aims to accede to the European Union and has therefore adopted standards, and introduced legal safeguards, for the protection of data and privacy which are in line with EU norms.'

¹⁵ The head note of TD and AD reads as follows:

"Much of the guidance given in AM & BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) is maintained. Where that guidance has been amended or supplemented by this decision it has been highlighted in bold:

- 'a) 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.*
- b) 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.

- c) *Some women are lured to leave Albania with false promises of relationships or work. Others may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women cannot be said to have left Albania against their will, where they have fallen under the control of traffickers for the purpose of exploitation there is likely to be considerable violence within the relationships and a lack of freedom: such women are victims of trafficking.*
- d) *In the past few years the Albanian government has made significant efforts to improve its response to trafficking. This includes widening the scope of legislation, publishing the Standard Operating Procedures, implementing an effective National Referral Mechanism, appointing a new Anti-trafficking Co-ordinator, and providing training to law enforcement officials. There is in general a Horvath-standard sufficiency of protection, but it will not be effective in every case. When considering whether or not there is a sufficiency of protection for a victim of trafficking her particular circumstances must be considered.*
- e) *There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in 'heavy cases' may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis.*
- f) *Once asked to leave the shelter a victim of trafficking can live on her own. In doing so she will face significant challenges including, but not limited to, stigma, isolation, financial hardship and uncertainty, a sense of physical insecurity and the subjective fear of being found either by their families or former traffickers. Some women will have the capacity to negotiate these challenges without undue hardship. There will however be victims of trafficking with characteristics, such as mental illness or psychological scarring, for whom living alone in these circumstances would not be reasonable. Whether a particular appellant falls into that category will call for a careful assessment of all the circumstances.*
- g) *Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.*
- h) *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 her family*
 - 2) *The level of education of the victim of trafficking or her family*
 - 3) *The victim of trafficking's state of health, particularly her mental health*
 - 4) *The presence of an illegitimate child*
 - 5) *The area of origin*
 - 6) *Age*
 - 7) *What support network will be available".*

52. Moreover, the evidence that relocation is unduly harsh and unreasonable is overwhelming. The background evidence together with the medical evidence, in the light of what is accepted by the Respondent, makes a truly compelling case. I have taken into account the evidence in the CPIN about reintegration (7.1) and the provision of mental health care (7.3). I have considered this against the evidence of the Appellant's serious mental health problems and specific vulnerabilities. Although she is not a victim of trafficking, the Appellant is a single mother and she is very vulnerable. She will not suffer from the same shame and isolation as a trafficking victim. However, even if a shelter and support is available to her and assuming that the authorities could keep her safe from AK, return would have a significant adverse impact on the family, and her ability to cope and support her children not least because she and her children have a significant subjective fear. I have taken into account what she told the psychologist when assessed.¹⁶ This fear is likely to be compounded by serious mental health problems (I have taken into account the prognosis and treatment recommendations made in the psychologist's report).¹⁷ All these factors would render relocation unreasonable. The children have

¹⁶ At 3.8.10 and 3.8.11 of the psychologist's report when Dr Agnew-Davies suggested to the Appellant that she could return to a different area in Albania, she stated:

"3.8.10 The fear is that he's always going to find me and he'll kill me. He has said to me on so many occasions, 'Wherever you go, I will find you'. He even messaged me on Facebook saying he is going to kill me. I did not reply. Albania is too small and wherever I go there is a way for him to find me. When I decided to leave, I did not even feel safe in Europe. I was trying to get as far as possible because I thought he could find me in Europe plus he can travel in Europe because there are different laws than in Britain.

3.8.11 I asked whether the violence worsened over time. [UD] said, 'I could say yes, in the last months. When I got the first restraining order he tried to commit suicide by cutting his throat and slitting his wrists. In that period he got more and more aggressive and it was hard for me to even recognise him at all. After the first order ended that lasted for six months, I asked for another restraining order but I wasn't granted one. During the six month restraining order whenever I tried to ring the police they barely helped me. I even asked to see one of the highest police [officers] but he would not even listen to what I had to say. He saw me but for only two minutes. I showed him the restraining order and said 'This is only a piece of paper and you're doing nothing about it' and he seemed like he did not care. Even when I was in court I had to literally hide behind my lawyer and the judge was just sitting there, smoking, enjoying her cigarette".

¹⁷ In terms of her prognosis and treatment recommendations these are detailed at paragraph 4.3 and I highlight the following:

"4.3.3 PTSD has been associated with significant 'impairment of the person's ability to function in social or family life' (National Centre for PTSD, 2005) and has been described as one of the most costly psychological morbidities globally (Kessler et al, 2000). [UD] is severely compromised in terms of her capacity to function, as indexed by standardised measures (e.g. 3.4.1; 3.9.14) and as described over Sections 4.1 and 4.2. Her prognosis is also undermined by her interpersonal difficulties and self doubts which will make it harder for her to invest the trust necessary for a healing therapeutic relationship. They would be improved by easier access to her brother and by access to an interpreter when she sees the GP until her English improves.

4.3.4 With regard to her dual diagnosis, most people who experience a single Depressive Episode can hope for complete remission. Patients with dual diagnoses are prone to relapse and in the interim, their depressive symptoms can persist for years associated with some disability and

settled here. They are at school. It is in their best interests not to return to Albania and to remain here. Whilst they have not been here very long, they are victims of child abuse perpetrated by their father. I accept they are traumatised. They are terrified of AK and understandably of having to return. I stress here that risk on return is to all members of the family, not only the Appellant.

53. The Appellant's case is that she is a member of a particular social group; namely, women in Albania or that she is at risk on account of imputed political opinion as a woman and as a woman who has challenged conventional mores about the conduct of a wife in Albania by leaving and divorcing her husband. This issue was an integral part of the appeal, but it was not adequately expanded on by either party. The bulk of submissions I heard related to risk on return, sufficiency of protection and relocation, despite my efforts to encourage expansion on this issue at the hearing.
54. The treatment by AK (and her children) is unarguably persecutory. Notwithstanding DM, women in Albania are now undoubtedly capable of being a particular social group. The problem for this Appellant, aside from DM (in that case the Appellant's treatment by her husband did not amount to persecution and she was not at risk on return), is that she must show a well-founded fear of persecution *based on her gender* and I do not find that she has established a causal link. Whilst there is significant discrimination against women the government is attempting to legislate to conform with European Union demands (see page 24 of Ms Young's report). I accept that the Appellant has not been successful in seeking protection in Albania (and is not likely to in the light of how she has been treated to date), there is a judicial system capable of protecting women. The evidence does not establish that this Applicant will be persecuted if she returns by reason of being a woman or indeed because of resistance to social mores. Indeed her children are similarly at risk. The Appellant is not at risk of persecution from the authorities in Albania. She cannot be considered as isolated and shamed by her family. She is not at risk from her family or from the authorities because she has deviated from strict family traditions of sex and marriage. She has the support of her family, although this does not amount to much in real terms. Whilst there is in this case a lack of protection, the evidence that I was referred to

distress (APA, 1994). Given the longevity of abuse and the resultant complexity and enduring nature of [UD's] disorders I think that any recovery will only take place over the long term: a matter of many years and in graded phases. I do not anticipate full recovery in the foreseeable future. Even with substantial input, if her right to remain is insecure, I doubt her ability to achieve any significant improvement in her mental health.

- 4.3.11 In summary, the positive prognostic markers, such as her committed parenting, her recognition of her need to talk and her stated relief from speaking with her solicitor (3.4: 3, 7; 3.9.7), and her support from her brother and family who are all at a distance, are outweighed by the nature and severity of [UD's] history, the complexity of her symptoms, by her lack of access to appropriate groups and by her insecure immigration status. [UD] will require long term highly specialist therapeutic treatment and consistent social support, and is liable to relapse. Stabilisation of her situation is necessary before she would be able to engage in the specialist trauma-focused work required by national guidelines but would in itself significantly promote her recovery.

does not establish that this is because the Appellant is a woman or because of her imputed political opinion. She and her children will be persecuted by her husband/their father who is a non-state actor because they are victims of domestic violence. It was not argued that victims of domestic violence are members of a social group. Such an argument could not be successful.

55. The Appellant's appeal is allowed under Article 3 ECHR. It is dismissed under the Refugee Convention.

Notice of Decision

The appeal is allowed on Article 3 grounds.

An anonymity direction is made.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Joanna McWilliam

Date 25 February 2019

Upper Tribunal Judge McWilliam