

**Flygtningenævnets baggrundsmateriale**

|                                 |                             |
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| <b>Bilagsnr.:</b>               | <b>68</b>                   |
| Land:                           | Albanien                    |
| Kilde:                          | Home Office                 |
| Titel:                          | "Operational guidance note" |
| Udgivet:                        | 17 juli 2006                |
| Optaget på baggrundsmaterialet: | 2007                        |



# OPERATIONAL GUIDANCE NOTE

## ALBANIA

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#### 1. Introduction

- 1.1 This document summarises the general, political and human rights situation in Albania and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Country of Origin Information at:

[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

- 1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim  
 API on Humanitarian Protection  
 API on Discretionary Leave  
 API on the European Convention on Human Rights

- 1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.
- 1.4 With effect from 1 April 2003 Albania is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However if, following consideration, the claim from someone who is entitled to reside in Albania, made on or after 1 April 2003, is refused, caseworkers should 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. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

### **Source documents**

- 1.5** A full list of source documents cited in footnotes is at the end of this note.

## **2. Country assessment**

- 2.1** Albania is a parliamentary democracy with a population of approximately 3.2 million. Legislative authority is vested in the unicameral People's Assembly (parliament), which elects both the prime minister and the president. The prime minister heads the government, while the presidency is a largely ceremonial position with limited executive power. The civilian authorities generally maintained effective control over the security forces.<sup>1</sup>
- 2.2** The latest Parliamentary elections were held on 3 July 2005. After a lengthy appeals process and re-runs in three of the 100 constituencies, the results were announced on 1 September 2005 (in total, there are 140 seats in Parliament, the additional 40 are allocated on a party basis). The leader of the Democratic Party, former President Dr Sali Berisha, was then invited to form a new government. In early November 2005, the OSCE/ODIHR released their final report on the elections and noted that although Albania had enjoyed its first peaceful transfer of power since the end of single party politics, there were still shortcomings to be addressed.<sup>2</sup>
- 2.3** The government generally respected the human rights of its citizens during 2005, however, there were serious problems in several areas including police beating and abuse of suspects, detainees, and prisoners, arbitrary arrest and detention, lengthy pre-trial detention, police corruption and impunity, societal killings and an atmosphere of fear in some areas due to traditional blood feuds, societal violence and discrimination against women and children and societal discrimination against Roma, Egyptians, and gay men.<sup>3</sup>
- 2.4** The law prohibits torture and ill-treatment, however the police at times beat and abused suspects. The Albanian Helsinki Committee and the Albanian Human Rights Group (AHRG) continued to report that police nationwide used excessive force or inhumane treatment. According to the AHRG, most mis-treatment took place at the time of arrest or initial detention.<sup>4</sup>
- 2.5** Amnesty international reported that police officers or prison guards allegedly beat detainees during arrest or subsequently in detention during 2005. Prosecutors did not always investigate complaints of ill-treatment or did so only after a delay. Even when an investigation was formally opened, it was often inconclusive. Prosecutors were reluctant to apply provisions of the Criminal Code dealing with "torture and any other degrading or inhuman treatment", preferring to invoke lesser charges, such as "arbitrary acts", which usually resulted in non-custodial sentences. Amnesty International were not aware of any convictions for these offences, although there were several reports that police officers had received disciplinary punishments for ill-treating detainees.<sup>5</sup>

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<sup>1</sup> USSD 2005 (Introduction)

<sup>2</sup> FCO Country Profile April 2006

<sup>3</sup> USSD 2005 (Introduction)

<sup>4</sup> USSD 2005 (Introduction)

<sup>5</sup> AI 2005

- 2.6 The law provides for an independent judiciary; however, political pressure, intimidation, widespread corruption, and limited resources prevented the judiciary from functioning independently and efficiently.<sup>6</sup>

### 3. **Main categories of claims**

- 3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Albania. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. 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 API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant 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 *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4 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 para 11 of the API on Assessing the Claim)
- 3.5 All APIs can be accessed via the IND website at:

[http://www.ind.homeoffice.gov.uk/ind/en/home/laws\\_policy/policy\\_instructions/apis.html](http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html)

### 3.6 **Blood feuds**

- 3.6.1 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'. The term blood feud can often be used in a very loose sense, which does not always refer to the strict code of honour and shame and related provisions in the *Kanun* and as such the reasons cited for involvement in a blood feud can include disputes with neighbours over land, accidental death caused by traffic accidents or fights, or resurfaced pre-communist disputes.
- 3.6.2 **Treatment.** Albania continued to experience high levels of violent crime during 2005 with many killings occurring as the result of individual or clan vigilante actions connected to traditional 'blood feuds' or to criminal gang conflicts. According to the interior ministry, at least nine

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<sup>6</sup> USSD 2005 (Section 1)

persons were killed during 2005 in blood feuds based on the medieval Code of Lek Dukagjini (the *kanun*), which was practiced particularly in the northern part of the country.<sup>7</sup>

- 3.6.3** Under the *kanun*, only males are acceptable targets in blood feuds; however, women were often killed or injured in attacks. According to the National Reconciliation Committee, approximately 738 families were effectively self-imprisoned during 2005 due to blood feuds. Fear of revenge in a blood feud also led approximately 50 families to live under protection outside of the country and prevented approximately 200 children—75 of whom were considered to be in serious danger—from attending school. Disputes over land and trafficking in persons remained the main grounds for blood feuds.<sup>8</sup>
- 3.6.4** During 2005 the police failed to identify a perpetrator in the August 2004 killing of Emin Spahija and suspended their investigation of the case. Spahija was the head of the non-governmental organisation (NGO) Peace Missionaries League, which worked exclusively on blood feud issues.<sup>9</sup>
- 3.6.5** In May 2005 parliament approved a law establishing a co-ordination council, chaired by the president, to develop a national strategy against blood feuds and co-ordinate activities of government agencies. However, the government had not implemented it at the end of 2005. The court of serious crimes tried blood feud cases and the law provides for 20 years to life imprisonment for killing in a blood feud.<sup>10</sup>
- 3.6.6** **Sufficiency of protection.** In September 2005 the Ministry of Public Order was transferred to the authority of a new Ministry of the Interior. Local police units report to the Ministry of the Interior and are the main force responsible for internal security. The Albanian State Police (ASP) employed approximately 12,000 officers. As noted above the law provides for 20 years to life imprisonment for killing linked to a blood feud. There is no evidence to indicate that individual Albanians fearing the actions of those seeking to carry out a blood feud cannot access protection from the Albanian police and pursue these through the legal mechanisms that have been set up to deal with blood feuds.
- 3.6.7** **Internal relocation.** The law provides freedom of movement within Albania and the government generally respected this right in practice. However, due to significant internal migration, many citizens no longer had local registration and status, leading to a loss of access to services such as education and medical care.<sup>11</sup> Whilst there may be some difficulties accessing local services internal relocation to escape the localised threat of a blood feud will not generally be unduly harsh. Whether internal relocation would enable an individual to avoid a threat in an individual case will depend on the tenacity of those attempting to enforce the blood feud.
- 3.6.8** **Caselaw.**

**KOCI [2003] EWCA Civ 1507** found that there was generally not a sufficiency of protection in blood feud cases.

**TB (Blood Feuds – Relevant Risk Factors) Albania CG [2004] UKIAT 00158** The tribunal found that a number of factors will be relevant in determining the nature of the risk on return:

- (a) whether the dispute can be characterised as a “blood feud” at all;

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<sup>7</sup> USSD 2005 (Section 1)

<sup>8</sup> USSD 2005 (Section 1)

<sup>9</sup> USSD 2005 (Section 1)

<sup>10</sup> USSD 2005 (Section 1)

<sup>11</sup> USSD 2005 (Section 2)

- (b) even if it can, then the extent to which its origins and development (if any) are to be regarded by Albanian society as falling within the classic principles of the Kanun;
- (c) the history of the feud, including the notoriety of the original killings and the numbers killed;
- (d) the past and likely future attitude of the police and other authorities;
- (e) the degree of commitment shown by the opposing family;
- (f) the time that has elapsed since the killing;
- (g) the ability of the opposing family to locate the alleged victim anywhere in Albania
- (h) that person's profile as a potential target for the blood feud; and
- (i) the prospects for eliminating the feud, whether by recourse to the payment of money, a reconciliation organisation or otherwise.

The tribunal noted that whilst it is plainly too early to say that any potential victim of a blood feud of the "classic type" can now look to the authorities for a sufficiency of protection...the governments initiatives are particularly likely to make themselves felt, in terms of institutional attitudes within Tirana itself.

**Skenderaj [C/2001/1336 promulgated 26 April 2002]** the Supreme Court of Judicature held that families involved in the Blood Feud were not a distinct social group and that the threat to Skenderaj was "a private matter." 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.

**3.6.9 Conclusion.** In general the Albanian Government is able and willing to offer effective protection for its citizens who are the victim of a blood feud; however, there may be individual cases where the level of protection offered is, in practice, insufficient. The level of protection should be assessed on a case by case basis taking into account what the claimant did to seek protection and what response was received. Internal relocation may be appropriate in some cases.

**3.6.10** In general as outlined in the case of Skenderaj (see above) victims of a blood feud are unlikely to be members of a particular social group (PSG) and a grant of asylum will not usually be appropriate. In cases where there is no sufficiency of protection and internal relocation is not an option claimants may qualify for a grant of Humanitarian Protection. However, in line with the position of the UNHCR<sup>12</sup> there may be some individuals who because of the circumstances of their case may be considered to be a PSG and where a grant of asylum may be appropriate. However, the majority of claimants from this category of claim will not qualify for either a grant of asylum or Humanitarian Protection and where there is a strong internal relocation argument supported by a previous successful relocation some claims may be certifiable, however, most cases are unlikely to be clearly unfounded.

### **3.7 Organised crime**

**3.7.1** 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 sufficiency of protection. Some claimants will claim that the police are linked to criminal gangs and that they face unlawful arrest and detention.

**3.7.2 Treatment.** Albania continued to experience high levels of violent crime during 2005. Many killings occurred as the result of individual or clan vigilante actions connected to traditional "blood feuds" or to criminal gang conflicts.<sup>13</sup> Corruption was also a major problem.<sup>14</sup>

<sup>12</sup> UNHCR position paper blood feuds (March 2006)

<sup>13</sup> USSD 2005 (Section 1)

<sup>14</sup> USSD 2005 (Section 3)

- 3.7.3** The serious crimes court and serious crimes court of appeal focused on the fight against organised crime and serious crimes and on improving the quality of adjudication.<sup>15</sup> The law mandates the sequestration and confiscation of assets derived from organised crime and trafficking. In June 2005 the council of ministers established a government agency to administer sequestered and confiscated assets.<sup>16</sup>
- 3.7.4** During 2005 the government began implementing the April 2004 witness protection law, establishing a witness protection unit in the ASP's newly expanded directorate of organised crime and witness protection and naming a commission to evaluate applications for admission to the witness protection programme. In June 2005 the government adopted its first regulations implementing the law. By end of 2005, three individuals had been admitted to the programme, although none had been relocated. Despite these efforts, witness protection remained a serious problem, and witnesses' fear of retaliation was a strong deterrent to the effective prosecution of organised crime and trafficking cases.<sup>17</sup>
- 3.7.5** During 2005 the prosecutor's office dealt with 266 cases involving 158 government officials accused of abuse of authority and other types of corruption. In May 2005 the chairman of the Durres property restitution commission was sentenced to 20 years in prison for abuse of duty and corruption.<sup>18</sup>
- 3.7.6** In May 2005 a new conflict of interest law designed to help eliminate government corruption entered into force. The law provides that government ministers may not own a company that is directly tied to their official responsibilities. During 2005 the special ministerial position created in 2004 to combat corruption was moved to the interior ministry.<sup>19</sup>
- 3.7.7** **Sufficiency of protection.** In September 2005 the Ministry of Public Order was transferred to the authority of a new Ministry of the Interior. Local police units report to the Ministry of the Interior and are the main force responsible for internal security. The Albanian State Police (ASP) employed approximately 12,000 officers. However, the overall performance of law enforcement remained weak during 2005 and unprofessional behaviour and corruption remained major impediments to the development of an effective civilian police force.<sup>20</sup>
- 3.7.8** However, impunity for police officers was less of a problem in 2005 than in previous years. The ASP Office of Internal Control engaged in the prevention, discovery, and documentation of criminal activity committed by police. Between January and November 2005 the office conducted 172 investigations that led to the arrest of 47 police officials and the dismissal of 68 others for misconduct. In the same period the ASP Office of Internal Control also reported at least 81 cases of corruption to the prosecutor's office that involved 118 police officers, 16 of whom were arrested. From January through to September 2005 the general prosecutor's office investigated 20 cases involving 26 police officers for performing arbitrary acts or abusing duty. The office terminated its investigation in 11 cases, dismissing 9 cases and suspending 2 because of failure to identify the perpetrator. The other 9 cases were under investigation at the end of 2005. In addition the government ombudsman received 14 complaints against police officers for use of excessive force or mistreatment through September 2005. The ombudsman determined that 2 complaints were valid and dismissed the others as groundless.<sup>21</sup>
- 3.7.9** The Albanian Government has made attempts to deal with organised and serious crime and there are mechanisms in place to deal with police officers who are corrupt. However some

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<sup>15</sup> USSD 2005 (Section 1)

<sup>16</sup> USSD 2005 (Section 5)

<sup>17</sup> USSD 2005 (Section 5)

<sup>18</sup> USSD 2005 (Section 3)

<sup>19</sup> USSD 2005 (Section 3)

<sup>20</sup> USSD 2005 (Section 1)

<sup>21</sup> USSD 2005 (Section 1)

links between rogue officials and organised crime have been found to remain and where there are links to serious organised crime or corruption the state may not always be able to provide sufficient protection to individuals.

**3.7.10 Internal relocation.** The law provides freedom of movement within Albania and the government generally respected this right in practice. However, due to significant internal migration, many citizens no longer had local registration and status, leading to a loss of access to services such as education and medical care.<sup>22</sup> Whilst there may be some difficulties in accessing services, internal relocation to escape the attention of invariably-localised threats from organised criminals/gangs or the attention of provincial rogue police will not be unduly harsh.

**3.7.11 Caselaw.**

**XM [2004] UKIAT 00178** The IAT concluded that on the facts of the case the Albanian authorities were able and willing to provide protection to the appellant. The authorities had acted on the appellants report helping to secure the release of his daughter and arrested one of the kidnappers. The IAT accepted that the Albanian authorities are making significant efforts to combat organised crime and corruption.

**3.7.12 Conclusion.** The Albanian authorities have undertaken various measures to combat organised crime and corruption and as a result are able to provide sufficient protection in some cases however, there are high levels of organised crime within Albania and such protection may not be available in all cases particularly where the corruption of state officials is an issue. However, internal relocation may be available to individuals seeking to escape a localised threat from members of organised criminal gangs. Taking into account sufficiency of protection or internal relocation which will be available in most cases a grant of asylum or Humanitarian Protection will not generally be appropriate, however cases should only be certified as clearly unfounded where it is clear that in the individual case there is a sufficiency of protection or internal relocation is clearly available.

**3.8 Involvement with opposition political parties**

**3.8.1** 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.

**3.8.2 Treatment.** Albania is a parliamentary democracy with legislative authority vested in the unicameral People's Assembly (parliament), which elects both the prime minister and the president. The prime minister heads the government, while the presidency is a largely ceremonial position with limited executive power.<sup>23</sup> The major political parties are the Socialist Party, Democratic Party, New Democrat Party, Social Democratic Party, Republican Party, and the Socialist Movement for Integration.<sup>24</sup>

**3.8.3** The latest Parliamentary elections were held on 3 July 2005. After a lengthy appeals process and re-runs in three of the 100 constituencies, the results were announced on 1 September 2005. The leader of the Democratic Party, former President Dr Sali Berisha, was then invited to form a new government. In early November 2005, the OSCE/ODIHR released their final report on the elections and noted that although Albania had enjoyed its first peaceful transfer of power since the end of single party politics, there were still shortcomings to be addressed.<sup>25</sup>

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<sup>22</sup> USSD 2005 (Section 2)

<sup>23</sup> USSD 2005 (Introduction)

<sup>24</sup> FCO Country Profile April 2006

<sup>25</sup> FCO Country Profile April 2006

- 3.6.4** Individuals and parties were able to freely declare their candidacy and stand for election during 2005. A political party must register with the Tirana District Court and declare an aim or purpose that is not anti-constitutional or otherwise contrary to law, describe its organisational structure, and account for all public and private funds it receives. The court routinely registered new political parties.<sup>26</sup>
- 3.8.5** **Sufficiency of protection.** In September 2005 the Ministry of Public Order was transferred to the authority of a new Ministry of the Interior. Local police units report to the Ministry of the Interior and are the main force responsible for internal security. The Albanian State Police (ASP) employed approximately 12,000 officers.<sup>27</sup> The Democratic Party is currently in power in Albania and although the authorities do not legislate, prosecute or persecute against opposition political parties some rogue elements of its local/regional organisation may do so. However, there is no evidence that individual members of any political party would not be able to access protection from the authorities should they need it.
- 3.8.6** **Internal relocation.** The law provides freedom of movement within Albania and the government generally respected this right in practice. However, due to significant internal migration, many citizens no longer had local registration and status, leading to a loss of access to services such as education and medical care.<sup>28</sup> Whilst there may be some difficulties accessing local services, internal relocation to escape the invariably-localised threat from members of an opposing political party will not be unduly harsh.
- 3.8.7** **Conclusion.** Albania is a parliamentary democracy and political parties are able to register and contest elections. Whilst political campaigns in Albania can be heated and rancorous there is no evidence to suggest that the treatment meted out to members of opposing political parties amounts to persecution or a breach of article 3 of the ECHR. In addition those facing threats from political opponents should be able to seek protection from the authorities or internally relocate to escape a localised threat. Therefore a claim based on fear of members of opposing political parties is unlikely to qualify for a grant of asylum or Humanitarian Protection and is likely to be clearly unfounded.
- 3.9** **Trafficking of women**
- 3.9.1** 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.
- 3.9.2** **Treatment.** The law prohibits trafficking in persons and provides penalties for traffickers; however, persons, particularly women and children, were trafficked to, from, and within Albania during 2005. Poverty, lack of education, family breakdown and crime networks at home and abroad contributed to the trafficking of women and children for sexual exploitation and cheap labour. There were reports that although the numbers of Albanian women being trafficked were decreasing many women were being re-trafficked.<sup>29</sup> Police corruption and involvement in trafficking were also problems.<sup>30</sup>
- 3.9.3** The law provides for penalties of 5 to 15 years' imprisonment for trafficking in persons; 7 to 15 years' imprisonment for trafficking women for prostitution; and 15 to 20 years' imprisonment for trafficking in minors. Aggravating circumstances, such as the kidnapping or death of a victim, can raise the severity of the punishment to a maximum of life in prison. Prison sentences may be supplemented by fines. The law provides that a government official convicted of exploitation

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<sup>26</sup> USSD 2005 (Section 3)

<sup>27</sup> USSD 2005 (Section 1)

<sup>28</sup> USSD 2005 (Section 2)

<sup>29</sup> AI 2005

<sup>30</sup> USSD 2005 (Section 5)

for prostitution receives 125 percent of the standard penalty. The law also mandates the sequestration and confiscation of assets derived from organised crime and trafficking. In June 2005 the council of ministers established a government agency to administer sequestered and confiscated assets.<sup>31</sup>

- 3.9.4** However, the prosecution of traffickers remained a problem during 2005. Authorities often released arrested traffickers because of insufficient evidence or, if they were prosecuted, charged them with lesser crimes or gave them less than the minimum sentence for trafficking. According to the prosecutor's office, there were 341 ongoing trafficking in persons cases with 343 defendants during 2005. Through to November 2005, 179 individuals were sentenced and, in four of the cases, courts convicted 10 defendants of trafficking in persons and gave each at least the minimum sentence. The police detained 53 individuals during 2005 in connection with trafficking of women for sexual exploitation.<sup>32</sup> Amnesty International reported that according to official figures, 62 people were prosecuted for trafficking women for prostitution, and 13 people for child-trafficking between January and June 2005.<sup>33</sup>
- 3.9.5** In 2003 the serious crimes court upheld the conviction of seven persons to 10 to 20 years in prison for trafficking newborn babies to Greece.<sup>34</sup>
- 3.9.6** During 2005 the government began implementing the April 2004 witness protection law, establishing a witness protection unit in the ASP's newly expanded directorate of organised crime and witness protection and naming a commission to evaluate applications for admission to the witness protection programme. In June 2005 the government adopted its first regulations implementing the law. By the end of 2005, three individuals had been admitted to the programme, although none had been relocated. Despite these efforts, witness protection remained a serious problem, and witnesses' fear of retaliation was a strong deterrent to the effective prosecution of organised crime and trafficking cases.<sup>35</sup> Difficulties in implementing the law meant that protection was in practice inadequate and victims were usually unwilling to testify against their traffickers for fear of reprisal. There were also concerns that traffickers or their families were using bribes or threats to induce relatives of those victims who did testify to persuade them to withdraw their testimony.<sup>36</sup>
- 3.9.7** In February 2005 the government approved a national strategy to combat child trafficking. In November 2005 the UN Special Rapporteur on the sale of children, child prostitution and child pornography, following a visit to Albania, welcomed the legislative measures, but called on the authorities to 'develop a national child protection system aimed at combating the poverty that drives exploitation.'<sup>37</sup> In July 2005 the Serious Crimes Prosecutor's Office charged a man with trafficking six children to Greece.<sup>38</sup>
- 3.9.8** In February 2005 the government approved a child trafficking strategy and national action plan for 2005-2007 based on UNICEF guidelines and the principle of assisted voluntary return of child victims. However, at the end of 2005 the government had not established an institutional structure to implement the strategy and action plan.<sup>39</sup>
- 3.9.9** The government provided limited services to trafficking victims. For example, the government only operated one shelter in Tirana. However, several NGOs were active in addressing victims'

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<sup>31</sup> USSD 2005 (Section 5)

<sup>32</sup> USSD 2005 (Section 5)

<sup>33</sup> AI 2005

<sup>34</sup> USSD 2005 (Section 5)

<sup>35</sup> USSD 2005 (Section 5)

<sup>36</sup> AI 2005

<sup>37</sup> AI 2005

<sup>38</sup> AI 2005

<sup>39</sup> USSD 2005 (Section 5)

needs, the IOM operated a re-integration centre in Tirana that provided counselling and medical services, job training, and some legal assistance. The Vatra Hearth Shelter, an NGO in Vlora, provided similar services. Police treatment of trafficked women continued to improve during 2005; however, foreign women who were detained by police at times lacked translation services or were not given a choice of lawyers.<sup>40</sup>

**3.9.10** Victims of trafficking often faced significant stigmatisation from their families and society. According to the Vatra Hearth Shelter, there have been many cases where families have threatened victims of trafficking, minors included, with death because of their past. Re-trafficking was a significant problem, with 131 out of 228 victims sheltered at the Vatra Hearth Shelter during 2005 reporting that they had been trafficked at least twice previously. Of the 228 victims at the shelter, 28 were internally trafficked and the remainder were from other countries.<sup>41</sup>

**3.9.11 Sufficiency of protection.** Whilst trafficking and re-trafficking of persons and especially women is clearly a problem in Albania the government has taken steps to curb this, introducing increasingly stringent laws and safeguards for those who may face trafficking. There were a number of examples of the prosecution and conviction of traffickers and while some received the minimum sentence others were jailed for 10-20 years. Considering the above and taking into account the caselaw quoted below in general there is a sufficiency of protection for victims or potential victims of traffickers.

**3.9.12 Internal relocation.** The law provides freedom of movement within Albania and the government generally respected this right in practice. However, due to significant internal migration, many citizens no longer had local registration and status, leading to a loss of access to services such as education and medical care.<sup>42</sup> Whilst there may be some difficulties accessing local services internal relocation to escape a threat from invariably-localised traffickers will not be unduly harsh.

**3.9.13 Caselaw.**

**VD (Trafficking) Albania CG [2004] UKIAT00115** 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 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.

**K [2003] UKIAT 00023** the IAT found that women from the north east of Albania who claim to have been or to be at risk of being trafficked for prostitution do form a particular social group.

**3.9.14 Conclusion.** Trafficking continues to be a significant problem in Albania; however the Government have taken steps to curb the activities of traffickers and to ensure that victims or potential victims can obtain protection from the authorities. There were a number of examples of the prosecution and conviction of traffickers and while some received the minimum sentence others were jailed for 10-20 years. As defined in the caselaw noted above, some but not all trafficking victims from Albania will be members of a particular social group. Generally there is

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<sup>40</sup> USSD 2005 (Section 5)

<sup>41</sup> USSD 2005 (Section 5)

<sup>42</sup> USSD 2005 (Section 2)

a sufficiency of protection for individuals in this category and most applicants will be able to relocate to escape localised threats from traffickers therefore in most cases a grant of asylum or Humanitarian Protection will not be appropriate. However, claims will only be clearly unfounded where the claimant is able to show that access to sufficiency of protection or internal relocation is clearly available.

### **3.10. Victims of domestic violence**

**3.10.1** 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.

**3.10.2 *Treatment*** Domestic violence against women, including spousal abuse, remained a serious problem during 2005. In traditionally male-dominated Albanian society, social norms and lax police response resulted in much abuse going unreported, and it was difficult to quantify the number of women who were victims of rape, domestic violence, or sexual harassment.<sup>43</sup> However, surveys indicated that domestic violence was common, affecting up to 40 per cent of women and affected women of all ages.<sup>44</sup> From January to September 2005 the centre for Civil Legal Initiative's received 180 complaints of domestic violence. The Women to Women Centre, an NGO that operated mainly in the northern part of the country, reported receiving approximately 20 calls per day from women reporting some form of violence.<sup>45</sup>

**3.10.3** Many communities, particularly those from the north-eastern part of the country, still followed the traditional code—the *kanun*—under which, according to some interpretations, women are considered to be, and were treated as, chattel. Some interpretations of the *kanun* dictate that a woman's duty is to serve her husband and to be subordinate to him in all matters.<sup>46</sup>

**3.10.4** The law does not specifically address violence against women, although it contains provisions aimed at protecting spouses from domestic violence. In practice the courts have not used this legal tool due to lack of understanding in how to apply the law.<sup>47</sup>

**3.10.5** The government did not have programme to combat domestic violence or assist victims. An NGO maintained a shelter in Tirana for abused women, although the facility had the capacity to house only a few victims at a time. The same NGO also operated a hotline that provided advice and counselling to women and girls.<sup>48</sup>

**3.10.6** The law criminalises rape, including spousal rape; however the concept of spousal rape was not well established, and often neither authorities nor the public considered it to be a crime, subsequently spousal rape was often not reported or prosecuted in practice.<sup>49</sup>

**3.10.7** Women were not excluded, by law or in practice, from any occupation and the law mandates equal pay for equal work; however, this provision was not fully implemented, although women continued gradually to gain economic power. Women enjoyed equal access to higher education, but they were not accorded full and equal opportunity in their careers, and well-educated women were often under-employed or worked outside their field of training.<sup>50</sup>

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<sup>43</sup> USSD 2005 (Section 5)

<sup>44</sup> AI 2005

<sup>45</sup> USSD 2005 (Section 5)

<sup>46</sup> USSD 2005 (Section 5)

<sup>47</sup> USSD 2005 (Section 5)

<sup>48</sup> USSD 2005 (Section 5)

<sup>49</sup> USSD 2005 (Section 5)

<sup>50</sup> USSD 2005 (Section 5)

- 3.10.8** The law provides equal rights for men and women under family law, property law, and in the judicial system. In practice, cultural traditions resulted in men often being favoured over women. The State Committee on Equal Opportunity is responsible for drafting, promoting and monitoring governmental gender equality programmes. However, the committee was underfunded and lacked political influence.<sup>51</sup>
- 3.10.10 Sufficiency of protection** The law guarantees equal rights for men and women and promotes equal opportunities in order to eliminate direct and indirect discrimination and in general the authorities are willing to offer sufficiency of protection to women in Albania. However, discrimination and violence against women persist especially in the north of the country and individuals may not be able to access sufficiency of protection due to cultural constraints. In some cases the actions of individual police officers may not be appropriate and therefore may not amount to sufficient protection.
- 3.10.11 Internal relocation** The law provides freedom of movement within Albania and the government generally respected this right in practice. However, due to significant internal migration, many citizens no longer had local registration and status, leading to a loss of access to services such as education and medical care.<sup>52</sup> Whilst there may be some difficulties accessing local services internal relocation to escape an invariably localised threat from a husband or other members of a family will not be unduly harsh.
- 3.10.12 Caselaw.**

**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.

- 3.10.13 Conclusion.** There is social discrimination and violence against women in Albania particularly in the north of the country and although in general the authorities are able and willing to offer sufficiency of protection there may be individual cases when the attitude of individual police officers may limit the protection offered. 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. In addition most claimants will be able to internally relocate to escape localised threats from members of their family. Therefore in most cases a grant of asylum or Humanitarian Protection will not be appropriate and cases are likely to be clearly unfounded.

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<sup>51</sup> USSD 2005 (Section 5)

<sup>52</sup> USSD 2005 (Section 2)

### 3.11 Gay men

**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 the Albanian authorities or ordinary Albanian citizens due to their sexual orientation.

**3.11.2 *Treatment.*** Before 1995 homosexuality in Albania was illegal with Article 137 of the Penal Code reading simply: 'Homosexuality is punishable by: up to ten years of imprisonment'. However on the 20 January 1995 after a campaign by the Gay Albania Society within Albania, and international pressure orchestrated by the International Lesbian and Gay Association (ILGA) and the Council of Europe consensual homosexual acts between adults became legal. Under Article 116 of the Criminal Code, the age of consent for same-sex sexual acts is set at 18, with a maximum penalty for infringement of five years imprisonment.<sup>53</sup> However, despite this law change the US State Department reported that societal discrimination against gay men persisted during 2005.<sup>54</sup>

**3.11.3** NGOs claimed that police targeted the country's homosexual community for abuse during 2005. According to the general secretary of Gay Albania, the police often arbitrarily arrested homosexuals and then physically and verbally abused them while they were in detention.<sup>55</sup>

**3.11.4** According to the ombudsman's office, in June 2005 police at the Tirana police commissariat detained, insulted, and physically mistreated a member of the Gay Albania association. Medical experts verified the mistreatment, and the ombudsman's office started an investigation. No action had been taken against the police by end of 2005.<sup>56</sup>

**3.11.5 *Sufficiency of protection.*** Although homosexuality is legal in Albania there is continuing societal discrimination against gay men and in some circumstances the attitude of individual police officers may limit the effectiveness of any protection offered by the state.

**3.11.6 *Internal relocation.*** The law provides freedom of movement within Albania and the government generally respected this right in practice. However, due to significant internal migration, many citizens no longer had local registration and status, leading to a loss of access to services such as education and medical care.<sup>57</sup> Whilst there may be some difficulties accessing local services internal relocation to escape an invariably localised threat from a rogue local police or ordinary members of the Albanian population will not be unduly harsh.

#### 3.11.7 *Caselaw.*

**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.

**3.11.8 *Conclusion.*** There is societal discrimination against gay men in Albania and the police may not be able to offer sufficient protection in all cases. However, this discrimination will generally not amount to persecution. The IAT found in **UKIAT 00067** that there was no evidence to support the view that gay men would be subject to any actions from either the authorities or the

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<sup>53</sup> International Lesbian Gay Association world survey

<sup>54</sup> USSD 2005 (Introduction)

<sup>55</sup> USSD 2005 (Section 5)

<sup>56</sup> USSD 2005 (Section 5)

<sup>57</sup> USSD 2005 (Section 2)

populace that would amount to persecution or breach article 3 of the ECHR. However, there cannot be said to be an openly gay and lesbian community in Albania and there is no evidence of national protection specifically in relation to gay men and lesbians. In the circumstances, where such a claim is refused it will not normally be appropriate to certify as clearly unfounded.

### 3.12 Prison conditions

**3.12.1** Claimants 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.

**3.12.2 *Consideration.*** Conditions inside Albania's prisons and detention centres remained poor during 2005 and were marked by food shortages and a lack of medicine. During 2005 prisoners and detainees rioted in Tirana and Shkodra and held hunger and other strikes at prisons in Kruja, Lushnje, Tirana, Peqin, and Burrel to protest at poor living conditions, the slow transfer of prisoners from pre-trial facilities to prisons, and other shortcomings. In addition overcrowding remained a serious problem in pre-trial detention centres.<sup>58</sup>

**3.12.3** In March 2005 a new prison in Lezhë was opened as part of a plan supported by the European Union (EU) to improve the infrastructure of the penitentiary system. Despite this and certain other improvements, prison conditions continued to be marked by overcrowding and poor diet and hygiene, leading to frequent protests by prisoners. Conditions for remand prisoners in Vlorë detention centre and in pre-trial detention facilities in police stations were particularly harsh.<sup>59</sup>

**3.12.4** According to the general directorate of prisons, there were 68 women serving in Prison 325 in Tirana and 36 women in pre-trial detention. NGOs monitoring prison conditions noted that Prison 325 lacked facilities for infants born to prisoners who were pregnant at the time of incarceration.<sup>60</sup>

**3.12.5** Pre-trial detainees were not always separated from convicted prisoners, and juvenile detainees were not always separated from adults. Twenty of the thirty-one minors serving prison sentences in the country were held at pre-trial detention centres, which did not provide for their education and did not always separate them from adults. While the Vaqarr prison had a wing for minors, the Children's Rights Centre of Albania (CRCA) noted that juveniles were mixed with adult prisoners for showers and leisure activities. Unlike in previous years, there were no reports of sexual abuse of juveniles during 2005.<sup>61</sup>

**3.12.7** The government permitted international human rights observers to visit both pre-trial detention centres and prisons; there were no reports of refusals to permit access for inspections by domestic independent human rights monitors. In May and June 2005 the Council of Europe Anti-Torture Committee conducted an extensive visit of the country's prisons and detention centres. The OSCE also visited prisons during 2005.<sup>62</sup>

**3.12.8 *Conclusion.*** Whilst 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. Similarly where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a

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<sup>58</sup> USSD 2005 (Section 1)

<sup>59</sup> AI 2005

<sup>60</sup> USSD 2005 (Section 1)

<sup>61</sup> USSD 2005 (Section 1)

<sup>62</sup> USSD 2005 (Section 1)

grant of asylum will not be appropriate. However, 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 and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate.

#### **4. Discretionary Leave**

**4.1** 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 API on Discretionary Leave)

**4.2** With particular reference to Albania the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

#### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or Humanitarian Protection can only be returned where they have family to return to or there are adequate reception, care or support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care or support arrangements in place.

**4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care or support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of twelve months or until their 18<sup>th</sup> birthday, whichever is the shorter period.

#### **4.4 Medical treatment**

**4.4.1** Claimants may claim they cannot return to Albania due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** A 2002 report by the European Observatory on Health Care Systems notes that Albanian health care services are delivered in poor facilities with inadequate equipment. Eligibility for health care is based on citizenship and payment of insurance contributions, and access to free primary care and pharmaceuticals is in theory restricted to individuals who have paid their insurance contributions. Access to health care services remains restricted by the country's inability to afford a full range of services and to replace facilities and services damaged during civil unrest. The 2002 report concludes that Albania's health care system is facing huge challenges, yet the basic infrastructure for health care delivery is being maintained, despite the difficulties, and rationalised.<sup>63</sup> A 2005 WHO report on hospital reforms notes that hospitals in Albania are at the present time not able to provide high quality services due to a limited budget, poor condition of buildings, lack of infrastructures, inadequate training of health personnel, and lack of managerial skill and competencies.<sup>64</sup>

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<sup>63</sup> WHO Health Care Systems in Transition Albania 2002

<sup>64</sup> WHO Europe Hospital Management 2005

- 4.4.3** A 2005 WHO report on pharmaceuticals notes that the domestic pharmaceutical industry produces a number of essential drugs, other drugs are imported but are more expensive for consumers. There are over 500 private pharmacies which are well stocked and better managed than government pharmacies. There is no shortage of essential drugs, but the lack of a good regulatory framework allows poor practices, even in private pharmacies, such as poor quality drugs, selling after expiry dates and the sale of unregistered drugs.<sup>65</sup>

#### **HIV/AIDS**

- 4.4.4** In December 2004 Albania had just 141 confirmed cases of HIV/AIDS with 22 new cases being reported during 2004. In March 2004 the Government allocated \$150,000 to purchasing anti-retroviral drugs and signed an agreement to purchase them through UNICEF. An infectious diseases specialist at Tirana Hospital said that in Albania HIV treatment was a multi-disciplinary intervention including home care of the patient, psychosocial support, nursing care, and end-of-life care.<sup>66</sup>

#### **4.4.5 Caselaw.**

**[2002] UKIAT 00060 C (Albania) Heard 10 March 2003, Promulgated 4 September 2003** The case centres on the question of whether the psychological condition of the father and his eldest son is such that it would breach their rights under Articles 3 & 8 of the ECHR if they were to be returned to Albania. The IAT considered the harm that return would cause and whether there was any direct responsibility of the contracting state for the infliction of harm and found in this case that there was none. The Tribunal found that there was appropriate medical treatment available in Albania for appellant and his son and there would not be breach of Article 3. The IAT also considered Article 8 following the case of **Devaseelan** and **Ullah**. On the basis of the ratio in Ullah, which binds the IAT, the Article 8 claim must fail, even though the IAT do not consider that there would be the flagrant denial or gross violation necessary under the ratio of Devaseelan.

- 4.4.6** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making 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.

### **5. Returns**

- 5.1** 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.
- 5.2** Albanian nationals may return voluntarily to any region of Albania at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Albania. The programme was established in 2001, 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 the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

### **6. List of source documents**

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<sup>66</sup> UNICEF Real Lives Stories 2005

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**Asylum and Appeals Policy Directorate**  
**17 July 2006**

