

**Upper Tribunal  
(Immigration and Asylum Chamber)**

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

**THE IMMIGRATION ACTS**

<b>Heard at Field House (AIT Procession House)</b>	
<b>On 17 &amp; 18 February 2009 (Field House)</b>	
<b>and on 5 &amp; 6 May 2009</b>	
<b>Field House (Procession House)</b>	

**Before**

**SENIOR IMMIGRATION JUDGE MCGEACHY  
SENIOR IMMIGRATION JUDGE SOUTHERN  
MS J ENDERBY**

**Between**

**AM  
BM**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr D. Jones and Mrs R Kotak, of Counsel instructed by Messrs Wilson and Co.

For the Respondent: Mr. M. Blundell, of Counsel instructed by the Treasury Solicitor

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

*in her own area, to relocate.*

*c) 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.*

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

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

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

### **DETERMINATION AND REASONS**

1. The appellants are young women who are citizens of Albania. Each applied for asylum, her claim being based on the fact that she was a victim of trafficking. Each has a young child. When their applications were refused, removal directions were given for their return to Albania.
2. Each then appealed, their appeals were dismissed but on reconsideration material errors of law were found in both determinations. The appeals therefore now come before us as second stage reconsiderations with a view

to giving country guidance on the conditions facing victims of trafficking on return to Albania and the likelihood of future persecution or treatment contrary to their rights under Article 3 of the ECHR. Each case before us also raises substantial Article 8 issues not least because each appellant has a young child.

3. Over four days of hearing we heard evidence from AM, Dr Roxane Agnew-Davies, a clinical psychologist specialising in violence against women, and from Dr Stephanie Schwandner-Sievers. We also had before us a report from Mr Alex Standish of the Department of Anthropology at Durham University and a number of medical reports relating to the appellants as well as the background documentation which we have listed in the addendum to this determination which includes the annual reports of the organisations in Albania set up to assist trafficked women who have been returned to Albania.
4. Article 3 of the United Nations Protocol, to prevent, suppress and punish trafficking in persons, especially women and children dated 15<sup>th</sup> November 2000, supplementing the United Nations Convention against Transnational Organised Crime (the 'Trafficking Protocol') of that date, defines 'Trafficking in Persons' in the following terms:
  - (a) 'Trafficking in persons' shall mean the recruitment, transportation transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal or organs;
  - (b) The consent of a victim of trafficking in person to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
  - (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;
  - (d) 'Child' shall mean any person under eighteen years of age.
5. The Trafficking Protocol definition has been described by UNHCR as representing "the current international consensus on the meaning of trafficking". The same definition is used in the Council of Europe Convention of 16<sup>th</sup> May 2005, on action against trafficking in Human Beings, in Article 4, subject to the addition of a subparagraph (e) defining "victim" to mean "any natural person who is subject to trafficking in human beings as defined in this article".
6. The UNHCR Trafficking Guidelines, dated 20<sup>th</sup> May 2002, break down this definition into 'three essential and interlinked sets of elements' as follows:

“The act: recruitment, transportation, transfer, harbouring or receipt of persons’  
The means: by threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a position of vulnerability, or of giving or receiving of payments or benefits to achieve the consent of a person having control over the victim;  
The purpose: exploitation of the victim, including, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery or servitude or the removal of organs.”

### AM’s case

7. AM (hereinafter referred to as “AM”) was born on 16 August 1983 in Sinat Village, near Kukes in Northern Albania. She entered Britain illegally in July 2006 and her daughter was born on 5 August 2006. In her determination Immigration Judge Kaler set out the basis of the appellant’s claim in paragraphs 11-16 as follows:

- “11. She was born in Kukes in Albania in a Muslim family. Her parents introduced her to A as a prospective husband and they both agreed to the match after the first meeting in September 2005. They were officially engaged on 1 October 2005 when rings were exchanged and there was a small celebratory family lunch. A asked and was granted her father’s permission to take her to Pristina as he had been promised a good job there, and they left for Kosovo on 20 October 2005. This was the last time she saw her family.
12. In Pristina, the Appellant was introduced to A’s friend N and was taken to a flat above a café where there were other women present. She greeted them but they did not speak to her. A then told her that the girls worked for him and she would do so as well. He beat her up in front of the girls, she was raped by N and then put to work as a prostitute. She had initially refused to comply but they threatened her family, saying they would recruit her sister as well.
13. She tried to kill herself a week later. She was in a flat on the fourth floor and she tried to break a window with the heel of her shoe. A heard her banging and beat her severely. She tried to escape through a bathroom window on another occasion but was discovered and beaten. She was also beaten every time she did not satisfy a client. The clients were manly foreigners and many of them spoke English.
14. A took her back to Albania five months later in March 2006. they went to Vlore and she was put to work again. About two months later, the Appellant realised that her stomach was getting bigger and she told A she believed she was pregnant. She did not think of this before as she always had irregular periods. A beat her up, and made her carry on working. She continued to service clients. A then told her that he would take the Appellant to England and sell the baby. A told her he had girls there too.
15. A, N and the Appellant travelled on a lorry on 3 July 2006, and A left them when they changed lorries. She remembered the date because A had said they would have to be on the lorry on 3 July. She was given hamburgers, biscuits, sweets and water on the way. The lorry contained empty boxes which they sat on. It was uncomfortable. When they arrived in the UK, N cut a hole in the canvas of the lorry and they got out. He threatened the Appellant and told her to stay nearby as he went to make a telephone call from a public booth. He was

getting angry and agitated, and the Appellant took the opportunity to walk away and then run off. She found a building with two rubbish containers and hid behind them for the night. The next day she went to a park and heard an Albanian woman talking, whom she approached. The woman, called Anita, felt sorry for her, took her home and had subsequently put her in touch with solicitors. The Appellant asked Anita to come to court with her but she was afraid to do so as she was afraid of what the traffickers might do to her after hearing the Appellant's story.

16. She had not tried to contact her family. They did not have an address. She only had the telephone number of a friend, which had been in her notebook that A had taken away. She was afraid to contact her family. She feared returning to Albania, as her family would feel disgraced as she had worked as a prostitute and they would not let her keep her baby. She would be ostracised. She also feared that A or N would look for her. The police would not protect her, as she had no money to bribe them. She did not believe she would be safe anywhere in Albania as such men had connections everywhere.”

The Immigration Judge's conclusions were set out in paragraphs 29 to 42 as follows:

- “29. I am satisfied that this Appellant has been consistent in her evidence. She has repeated the same account in interview, statement, to third parties and at the hearing and there are no inconsistencies. This Appellant is a Muslim woman and I find her account of her meeting with A and subsequent engagement plausible, even though it was rushed. The fact that there was no party to celebrate the engagement does not mean that there was no engagement. The Appellant arrived in the UK without any personal effects and so it is not surprising that she does not have any photographs or other evidence of the engagement.
30. The Appellant stated that she had contemplated suicide. She has been consistent in her description of her attempt: she wanted to throw herself out of a window but was unsuccessful in breaking the glass. She explained why she did not speak to the other girls in the flat in Pristina in whose presence she was for about 30 minutes. A was with her for some of this time.
31. The objective evidence presented by both parties gives great detail about the way in which young girls are entrapped into prostitution and their treatment by those who exercise control over their lives. I also find that the Appellant's account is consistent with the objective evidence.
32. I do find it plausible that the appellant was smuggled into the country on a lorry in uncomfortable circumstances. A and N would have been concerned that she deliver a healthy baby but I do not believe they would have cosseted her and made her unduly comfortable on her journey. They gave her food, which is not the most nutritious but would have sustained her.
33. I am able at this stage to make the following findings of fact:
- (1) The Appellant went through an arranged marriage with A;
  - (2) She was lured to Pristina with him;
  - (3) She was forced into prostitution and was repeatedly used by A and N;
  - (4) She became pregnant and was beaten by N and A when this was discovered.
34. There are some aspects of the Appellant's evidence that cause me concern.

The first of these is her statement that she was beaten by A when he discovered her pregnancy, but then he decided he would bring her to the UK to sell her baby. Is it implausible, as argued by the Respondent, that A would behave in this conflicting way? I find merit in the Appellant's submission that he was angry at first and may have tried to force a miscarriage. When this was unsuccessful, he decided he would make events work to his benefit by selling the child. I am satisfied by this explanation.

35. The second matter of concern is the Appellant's claim to have been trafficked to the UK despite being eight months' pregnant. Why would A have done so for her, rather than bring over a young girl who he could put to work immediately. I am not persuaded by the Appellant's assertion that he intended to sell the baby in the UK. Whilst there are numerous reports of couples who are unable to bear children or find it difficult to adopt here travelling abroad to seek babies for adoption abroad and clandestine attempts to bring babies into the country for themselves, there is no objective evidence to support the contention that there is a market for babies to be sold in the UK. Why not simply take the child away from the appellant after birth and then try to sell the baby from Albania? If the Appellant's account is to be believed, then A has connections with members of other criminal fraternities and highly organised gangs. I suppose it may be plausible that they have seen an opportunity and would try to offer a new "service" to people here. They could use the Appellant for prostitution, whether she had a child with her or not.
36. The account of the Appellant's escape from N in the UK also causes me concern. She was heavily pregnant and tired from her journey to the UK. She took her chance when she saw that N was distracted on the telephone but he appears not to have noticed her disappearance nor did he give chase. His purpose in coming to the UK on this occasion was to bring the appellant to the UK and make a profit from her, yet he did not pursue her to retrieve his "investment". The Appellant does not suggest that she has heard from other Albanians that she is being sought. I do not find it plausible that N would simply have let her walk away.
37. The Appellant conveniently met Alice (*this is an error – the Immigration Judge is referring to Anita*), the Albanian woman who gave her shelter. She did not meet her immediately and had to sleep rough and approach many people before she came upon her. The Respondent is right to be suspicious about her account.
38. Given my findings of fact as set out in paragraph 33, why did this Appellant travel to the UK if not for the reason she has given? My findings do not lend support to the contention that she travelled here voluntarily, since she was being kept by A and N. It has not been suggested by the Respondent that she may have been released by them when they discovered her pregnancy and she made her own way here. I do not believe she would have had the connections or resources to make her own arrangements. I have taken on board the medical evidence about her mental state, which I accept in its entirety. None of this was challenged by the Respondent. This Appellant has complex post traumatic stress disorder, which I accept has been caused by her experiences in 'captivity'. She is clearly traumatised and is receiving counselling and treatment. This evidence outweighs my concerns in paragraph 35, 36 and 37 above. She strikes me as being docile and I find that she must have been under the control of others to have been brought here.
39. I therefore also find that the Appellant was smuggled into the country and then escaped from her captor. She has therefore been the victim of people smugglers whose intention was to put her to work as a prostitute.

40. Does the appellant qualify as a refugee, and what is the risk to her if returned to Albania?

41. Is there a risk that this Appellant would be victim of re-trafficking? The leading case is that of VD. The victim in that case was a 28 year old Albanian woman who believed she would have been trafficked, as was her sister before her. The Tribunal accepted that there was a real risk of women being trafficked from Albania and placed the figure at less than 6000 women over a ten year period. This was after considering at length the numerous objective reports. Whilst there was evidence that girls aged 14-17 were at greater risk not all girls of this age were at general risk of being trafficked. The risk of being trafficked was not increased if a girl had been previously trafficked, unless there were particular features, such as where the girl had been sold by her family to traffickers or that those responsible for the abduction had shown an interest in that person's whereabouts. Thus, the Tribunal rejected the general proposition that women in general were at risk of being trafficked from Albania or that there was risk of re-trafficking. The Tribunal also considered that there was a sufficiency of protection in view of the numerous changes in the law and efforts made by the authorities.

42. Applying those findings to this case, I find that there is not a real risk that the Appellant would be at risk of being trafficked on return to Albania. She was not sold to A; her father blessed her engagement after being satisfied that his daughter consented to the match. Whilst some abductors do pursue their victims and their families, there is no evidence of that in this case. The appellant was not pursued when she escaped nor has anyone been enquiring of her whereabouts. I accept that in her case the Appellant did not have the opportunity of reporting the matter to the authorities but there is a sufficiency of protection for her in her country."

8. Immigration Judge Kaler concluded, it appears, that AM would be able to return to her family. Reconsideration was ordered by Senior Immigration Judge McKee on 14 March 2007.

9. On reconsideration Senior Immigration Judge P. Lane found a material error of law in the determination. He gave his reasons as follows:

"1. At the reconsideration hearing on 4 October 2007 the Tribunal found that there were material errors of law in the determination of the Immigration Judge. Having found the appellant to be largely a credible witness, the Immigration Judge concluded that the appellant was not at real risk of persecution or serious ill-treatment, if returned to Albania. The Immigration Judge based her conclusions in part at least upon the country guidance case of VD (Trafficking) Albania [2004] UKIAT 00115. However, as set out in paragraph 10 of the grounds accompanying the application for reconsideration, the Immigration Judge failed to have regard to material points of distinction between the facts in that case and the present; in particular, the following:-

- (a) The appellant had been trafficked by her fiancé/husband;
- (b) The appellant was from northern Albania where the "Kanun" code decreed that a fiancé had the rights of a husband over the appellant;
- (c) The appellant had been in servitude as a prostitute in Albania, which was relevant to the risk of recognition by clients and traffickers;

- (d) The appellant's traffickers knew the appellant's home and had already used coercion involving threats of what might happen to other family members;
  - (e) The Immigration Judge had made a finding that internal relocation was unreasonable in the case of the appellant;
  - (f) The above circumstances had a material bearing on the risk of re-trafficking; and
  - (g) As a single mother with a young baby, the appellant had special reintegration needs.
2. Mr Ouseley conceded on 4 October that the Immigration Judge had materially erred in law by failing to make proper findings regarding the issue of whether the appellant fell within a particular social group for the purposes of the Refugee Convention. Finally, although not mentioned in the grounds, it is apparently the case that at paragraph 46 of the determination, the Immigration Judge made use of material in the form of a US State Department Report of 5 June 2006, which was not available to the parties and that as a result the Immigration Judge infringed rule 51(7) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.
3. The Tribunal was unable on 4 October to proceed to substitute a fresh decision to allow or dismiss the appeal because, although Ms Kotak indicated that the appellant would not be called to give further oral evidence, Mr Ouseley was without the Home Office file and was not in a position to deal substantively with the matters referred to above."
10. Senior Immigration Judge Lane preserved the Immigration Judge's findings relating to the events which had led to this appellant claiming asylum. Mr Blundell asked us to conclude that he has also preserved a finding by the Immigration Judge that this appellant could return to her family. Mr Jones asked us to hear evidence from the appellant on this issue and the issue of whether or not AM's father was a "rational" man. We considered that not only was the Immigration Judge's finding on the ability of the appellant to return to her family cast into doubt by the very detailed background evidence which was not before the Immigration Judge but also that that finding was in itself unclear. We agreed to hear evidence from AM on that issue.
11. AM's evidence was that she was frightened of returning, that her family would never accept her daughter and that on return, if she were allowed to remain in the family home she would be separated from her daughter and would be kept out of sight of others in the village until such time as her father could arrange a marriage for her. The only men willing to marry here were likely to be old or disabled and men whom she would not ever herself wish to marry. Her evidence also contained the statement that she could not take her daughter back to Albania and would do anything she could to ensure her daughter did not return.
12. In considering AM's appeal we have taken account not only of the facts found by the Immigration Judge but also the statements made by AM regarding her own psychological state here, her suicidal ideation and the fact that Albanians whom she has met here have shunned her when they find out

about her history. In paragraph 68 of her initial statement she stated that she did not believe there was anywhere in Albania where she would be safe because:

“These men have connections everywhere in Albania, they have friends and family. Sooner or later they will found out where I am. I ran away from them they will be very angry with me. They are capable of anything. They beat me, raped me, they harmed me and other girls. I think they are very dangerous men.”

She went on to say at paragraph 105,

“The Home Office at paragraph 26 (she is commenting on the refusal letter) tells me that my family could have given me support. I could not go to my parents. It would bring shame on my family if I went back to them and told them I had been working as a prostitute and had a baby. “

106. My father would not turn me away. But I know my father would never accept my daughter as his granddaughter. He would not allow her to live with us. I also know my fate. I know that I will be given to the first man who comes to ask my father for my hand in marriage, regardless of their age.
107. I believe that my baby would be sold to a childless couple in our area as I would not be allowed to keep her. There is nothing I would be able to say to my parents to stop them. I know their mentality. This is how they think. I know that my father would rather bury my child, than let her be with me, as if he sees her every day he would be reminded of my past and the shame I brought on the family.
108. I know that my mother would do anything to have me back, but she has not got any say in my family. It is my father who has the voice. My mother was always blamed because my sister was born slightly disabled. My brother has been brought up with the same mentality as my father and he would not protect me or look out for me ... In my family, tradition is important and must be followed.
109. I believe that the attitude of my family and the people living in my village will be that it will be far better for me to take my own life, or be killed rather than my family having to face people with the shame I brought on them. I will be labelled as a prostitute, and once a prostitute always a prostitute”.

13. In paragraphs 115 onwards she said:-

“115. I felt suicidal before I gave birth, but I do not any more. At the beginning I did not love my baby, but now I have bonded with her and I love her so much.

116. If I was sent back to Albania, my parents could force me to give away my baby. The police cannot a family (sic) which child to keep in the family and which family to let go (sic).

117. In Albania the only kind of support you have is if you turn to your family or your husband. I could give my baby to the State but I do not want to do that. I am not going back to Albania. I will not harm my baby, I will leave a note next to my daughter but I will kill myself before they put me on the plane.”

14. We understood AM's evidence to be that in her daughter's interest, she would consider it better to kill herself rather than take her daughter back to

Albania.

15. There were a number of medical reports relating to AM before us. A report from the Sankofa Foundation in Nottingham had been prepared by Ms Miriam Hollis who has a diploma in psychotherapy and counselling. She refers to the appellant's difficulty with sleeping and described the powerlessness which would be felt by a woman who was controlled in prostitution and the resultant disassociation or detachment which would be a means of psychological survival. She said that the appellant was still in a state of shock and described the appellant as being too afraid to make contact with anyone from the Albanian community living in Nottingham and having lost the capacity to trust anyone from her country who spoke her native tongue. She said that AM was still highly vulnerable and referred to the appellant's fear that she could be followed to Nottingham (where she is now living) by the men who brought her to Britain and that they would wish to sell her child. She concluded that it would be psychologically inappropriate for AM to return to Albania.
  
16. A report, dated 8 December 2008, had been prepared by Dr Roxane Agnew-Davies. She is a Clinical Psychologist specialising in violence against women and a part-time Senior Research Fellow in the Institute of Primary Care and Public Health at London South Bank University. She is a specialist advisor to the Victims of Violence and Abuse Prevention Programme in the Department of Health. She is accredited as an expert on sexual violence for Co-ordinated Action against Domestic Abuse (CAADA) and a mental health advisor to the Greater London Domestic Violence Project and Director of Domestic Violence Training Limited as well as being an Associate Fellow of the British Psychological Society and a full member of the Division of Clinical Psychology. In her report she sets out the various tests which she undertook to assess AM's mental state and gives details of her conversations with AM. She had administered the "Beck Anxiety Inventory" and stated that AM was placed within the severe range as classified by the test designers. She also referred to AM's suicide attempts and her continued thoughts of suicide – it would appear that the only thing that was stopping her committing suicide was her love for her daughter. She referred to a trauma symptom inventory which she said indicated that the appellant's symptoms were more severe than 99% of the population with respect to anxious arousal – anxiety – and fear-related symptoms, depression, intrusive events (memories of traumatic events) and association (the psychological strategy of "blinking out"). In Section 4 of her report she sets out her opinions relating to AM stating that she is suffering to a severe degree from chronic, complex post traumatic stress disorder and major depressive order and emphasised the appellant had "suicidal ideas", interpersonal difficulties and a damaged sense of identity. She described AM as having severely depressed moods and at 4.1.12 concluded that AM presented a:

"mild risk of suicide at the current time but in my professional opinion this will escalate into a high risk at any point when, or after, she is at imminent risk of further abuse, or believes herself to be at such risk, including being served with removal directions".

She referred to high risk indicators associated with return to Albania being that AM had repeated said she would rather commit suicide than return with or be separated from her daughter, that she continuously thought for long periods about committing suicide which she referred to being connected to the insecurity of AM's current status and said that the likelihood of a successful suicide attempt was increased because AM had considered specific means of killing herself and what she would do if her first attempt failed which would increase the likelihood of her attempts culminating in a successful suicide (4.1.13). She concluded in paragraph 4.1.17 by stating that AM had chronic post traumatic stress disorder in the context of major distress disorder.

17. A Consultant Psychiatrist, David L Bell, prepared a further, undated, report. It assesses AM's psychological state in some detail. Of note is his comment that AM felt:

"cut off from her sexual body and experiences no sexual desire. Ms M... was very clear that she would never again have a sexual relationship with a man – she does not want to be near men, and could never trust a man again".

When considering the issue of the appellant's removal he concluded that:

"Removal would be removal to a context where she regards herself to be under very serious threat, a threat which, as she understands it, she cannot be protected from. I am, of course, not in a position to say whether her fears are based on a reasoned assessment of her circumstances or whether these fears derive in a major part disordered imaginings, deriving from her psychiatric state. I can say, however, that she believes that she would be sought out by her persecutors and it is this belief that is material to the deterioration in her state."

18. Dr Bell commented also on the issue of treatment in Albania stating that, given AM's deteriorating mental state, it was not at all likely that she will be able to make use of psychiatric services. He added:

"Further she would be likely to be very highly suspicious of personnel, and may regard them as agents of state/authority whom she cannot trust, who might very well be seen as blaming him/her for her current situation, and treated with contempt. She may even believe that they would inform her persecutors of her whereabouts".

19. There is also a statement from Ms Helena Bando, a Refugee Action volunteer who supported AM by coming with her to the appeal. She referred to her contact with the appellant and made reference to an incident when AM had read in an Albanian newspaper that some escapees were killed if their traffickers recaptured them. She said that she had been told by the appellant that victims of trafficking were considered to be "loose – dirty" in Albania and could no longer be accepted as part of normal society, being shunned by others and even by their own families.

20. We accept that the appellant was clearly close to Ms Bando and that she attends an educational project run by Refugee Action in Nottingham.

## BM's case

21. BM (hereinafter referred to as "BM") was born in Vau-Dejes, in Albania, on 6 December 1986. As can be seen from the following extract from the determination of the immigration judge who dismissed her appeal, her account is of an horrific experience of abduction, rape and forced prostitution. Having arrived in the United Kingdom in September 2003, she was granted discretionary leave until November 2004 on account of her age and she appealed against refusal to vary that leave by way of the grant of further leave.
  
22. Her appeal was heard by Immigration Judge Kealy on 5 January 2006 and dismissed. In paragraphs 4 to 9 of the determination the Immigration Judge set out details of the appellant's claim as follows:-
  - "4. She lived with her parents in a small town in North Eastern Albania. She left school at fifteen and worked as a seamstress. She has a much younger sister.
  
  5. At Christmas 2002 a gang of masked people traffickers broke into their house in the night, shot her father dead, gagged and blindfolded the Appellant and drove her away in a van. She lost touch with the passage of time but it seems that she arrived in Bari in Italy, though she claims not to recall ever leaving the van or crossing the sea. It was not till later that she discovered where she was.
  
  6. She was taken into a building populated by a team of four or five (masked) Albanian men, possibly a warehouse of some kind, and a number of other girls of varying nationalities who were also housed there. She was then "broken in" by the men and was raped and abused by all the men in turn. Until then she had been a virgin. This ordeal lasted for about ten days after which, thoroughly broken in, she was put on the streets as a prostitute to earn her keep.
  
  7. She was always watched from a distance by one of the Albanian pimps (presumably no longer masked) so that she could not escape. It was only then that she discovered where she was. She worked as a prostitute for about nine and a half months, paying all her "earnings" over to her pimps. It was made clear that they kept anything back at their peril. Discipline was inflicted but only where it would not show to put off the customers.
  
  8. Then one of the girls mentioned to her that there was usually a lorry parked in a side street nearby. On 22 or 23 September 2003 she managed to slip out and get into the unlocked back of this lorry, not knowing where it was going or anything else about it. Again she lost track of time but was in the back of this lorry without food or water or anywhere to relieve herself for as long as it took the driver(s) of that lorry to reach the Channel, cross in a ferry and land somewhere in South Wales. She never got out from start to finish and the drivers did not know that she was there. After it had been stopped two or three hours the lorry was opened and she was able to emerge, much to the surprise of everyone outside.
  
  9. She walked away until she met a woman who she later found out was herself a refugee from Macedonia, name of Linda. She was then kindly taken to Newport Social Services and they in turn contacted the police and the Immigration Service where she claimed asylum."

In the following three paragraphs he sets out the basis of BM's claim as follows:-

“10. If she were to return she feared what would happen to her. Her father had always been sickly and was now dead. She has no brothers and only her mother and sister as far as she knew ((t)here are other relations but she does not know them). Many relatives had emigrated. In October 2003 she had not dared tell her mother where she was in case she was subjected to pressure by the traffickers to find out where the appellant had escaped to.

11. If she goes back she fears that she would again become a target of the traffickers because they would be afraid that she would be able to identify them (to the police?). She had never before been away from her home town, and knew nowhere in Albania to which she could safely take internal flight as a trafficked woman who had escaped she would be marked out. The gangs had a lot of power and influence and the police were powerless to help.

12. The police would be unable to catch the people responsible for her capture and trafficking or to protect her. They were corrupt.”

23. In paragraph 96 he noted that the appellant's account had not been disputed by the respondent and he said she had not been disbelieved about her core claim. He said that she would be:

“returned to Albania as a single girl with a baby, as a girl who was kidnapped, trafficked and forced to work as a prostitute in Italy after a period of serious sexual abuse, whose father was killed by her kidnappers and had managed to reach the UK where she was refused asylum but given shelter for over two years”.

24. There was some issue about a claim that her mother had reported the traffickers and about a police report which had been produced. The Immigration Judge did not accept that document but stated that it did not cause him to doubt the appellant's own story.

25. He, however, went on to dismiss the appeal, stating that the appellant:

“had been trafficked and had escaped and that is all. She can be safely returned and there is no real risk that her rights under Articles 2 and 3 will be infringed which is what the respondent has said all along.”

He went on to consider that there was no evidence to show that a single woman with a child could not settle safely in Tirana. Internal flight was therefore open to the appellant.

26. Reconsideration having been ordered by Senior Immigration Judge Latter on 30 January 2006, Senior Immigration Judge Freeman found a material error of law in the determination after a hearing on 20 November 2006. He wrote:

“1. The Immigration Judge, in the course of an exceptionally thorough and clear decision, treated VD [2004] UKIAT 0015 CG as if it still settled the question of

whether those once trafficked were at any greater risk of being trafficked again, despite the later evidence from the State Department report for 2004, to which he was referred, suggesting that 'Re-trafficking became a significant problem'. There may be a number of explanations for this phenomenon, by no means all of which would suggest an affirmative answer to the question posed; but they need to be investigated.

2. We did not consider that the judge made any material error of law in not dealing with the appellant's evidence about telephone conversations she had had with her mother (relating to repeated threats by those who had trafficked her) after she left Albania, up to August 2005. At her interview of 12 August 2005 (Q129) the appellant was asked about how her mother and sister were, and replied 'They are doing okay but my mother is a bit worried what will happen to my sister now she is growing up'. In our view the judge was entitled generally to reject the 'mother-based evidence' as he did at §100."

27. Again, therefore, the basic facts of BM's appeal are accepted. We note the terms of her witness statement and the fact that BM was not allowed to go to High School because of the distance from her home and the fact that she was told that she had to think about her family's honour and that her relationship with a man would bring shame on her family. She stated she had never been allowed to go to town on her own and added that she did not know whether she had any suitors. She said (at paragraph 18 of her statement):

"Someone may have approached my parents to ask for my hand in marriage. If my family did not like the suitor they would not tell me. My family had the power to decide who was good enough in their eyes to marry me. He never told me about any suitors."

She indicated that she could see that she had been a "good target" for the traffickers as she had no brothers and the only male in her family was her sick father. She said that she must have been targeted by someone who knew about her family. She referred to the attack in the middle of the night, and to her father being shot before she was abducted. She went on to describe how she had been "broken in" by the traffickers over a period of ten days and she described her escape. She referred to her relationship in Britain which had led to the birth of her daughter on 21 November 2005. She went on to say that she was fully integrated in Britain having completed "Level 1 and GCSE in mathematics and biology in July 2005 as part of a health a social care course". She had also studied English on a part-time basis, attended Sure Start and had local friends including one with three children of her own. She was currently undergoing a beauty and hairdressing course at a college in Southend. She said if she returned to Albania it would not be possible to keep it quiet for long that she had been a victim of traffickers and it would be obvious that she is a single parent and that by itself was not accepted in Albania. She and her daughter would be ostracised and abused.

28. In paragraph 105 she said that she feared the gang who trafficked her to Italy and that she did not know what had become of her mother and sister. She believed there was a strong possibility that she would be re-trafficked if she returned. She went on to say that she could not disclose her trafficking background to her GP because she felt so ashamed and would be frightened

to do so.

29. Dr Roxane Agnew-Davies has also prepared a detailed report, dated 27 July 2007, on BM. In paragraph 1.05 of her report she set out her conclusions. She stated that BM presented with symptoms of post traumatic stress disorder but also had additional symptoms that could not be subsumed within that diagnosis. She added:

“While I suspect she has made some recovery since her arrival in the UK and I found her to be a committed parent, her symptoms render her vulnerable in the longer term.”

30. She referred to the offer of therapeutic support that BM had received from the Poppy Project which she described as a specialist trauma service saying that it:

“may be insufficient to meet her needs but I do not find her ready to access trauma focus therapy. The clinical implications of her experiences of forced prostitution over a protracted period at a young age increase the probability that Ms (BM) is likely to suffer clinically significant and prolonged psychological problems. She will remain vulnerable to relapse when her current symptoms resolve. The psychological conditions impair her coping strategies and render her vulnerable in situations of risk. My professional opinion is that (BM's) return to Albania would cause significant detriment to her mental health, jeopardise her recovery prospects and undermine her parenting capacity.”

31. At paragraph 3.05.13 Dr Agnew-Davies wrote:-

“With reference to her ex-partner, her daughter's father (AX, a Kosovan national) (BM) explained the relationship lasted until shortly after her child was born. She explained, “We never had a good relationship. I knew it was apparent while I was in college in South Wales, I never felt anything for a man in my past. I just did not want it at all. I just felt my skin crawling and ashamed and embarrassed. I never had a feeling of love in my life. I thought it was something special. No one can know how something can be. You think you are happy and had good times together, but we never wanted the same things. We had different thoughts. He was so straight; he wanted to control my life. I want to be free, not to do stupid things that are not acceptable, but to do things that most people do, like have friends.”

32. Dr Agnew Davies referred to AX being violent during BM's pregnancy, although he was not violent after her daughter had been born. She said that BM had said she wanted to have nothing more to do with men but just to continue with her training. Dr Agnew-Davies considered that BM was suffering from a complex form of PTSD. She said that that condition is not an inevitable consequence of trafficking although it is a common problem. She that she did not consider that BM presented a current suicidal risk but went on to say that:-

“I did not feel confident if she was separated from her daughter that this would not quickly become an issue, particularly in the light of her depressive symptoms. Suicide attempts are most likely when hopelessness is coupled with low self esteem, and there is evidence in this case that (BM's) self esteem is fragile.” (4.2.15)

33. In Section 4.3 of the report Dr Agnew Davies refers to the likely impact upon BM of her being returned to Albania. She referred to the vulnerability of BM on return stating that she associated return to her country with death or being killed and stated that:

“I think it is a risk that she would act on her belief that death was preferable to further sexual violence, particularly if separated from her daughter”.

She referred to BM anticipating rejection by the community and psychological harassment for herself and her daughter, pointing out that the degree of social support or isolation was a critical determinant of recovery from PTSD. She also stated that BM believed that she would be subjected to sexual harassment and abuse, including rape without hope of protection on return and that that would be highly likely to cause her PTSD symptoms to flare up if she were to return to Albania, with the extremely negative consequence of incapacity to cope as a lone parent.

34. At paragraph 4.3.5 she wrote:

“In summary I believe that (BM’s) current symptoms render her less able to adjust to return to Albania than a healthy person, or one who has not experienced abuse. She is likely to be triggered to heightened flashbacks, which in turn would increase her symptoms in a spiralling fashion. These would not just include hyper-vigilance and hyper-arousal but she is more likely to develop major depressive symptoms, including despair, hopelessness and suicidal ideals. My professional opinion is that BM’s return to Albania would cause significant detriment to her mental health and jeopardise her recovery prospects. I have stated above that a number of factors are likely to contribute to the deterioration in BM’s mental health if this were necessary.”

35. Dr Agnew-Davies also gave evidence before us. Having explained her diagnoses in the context of both PTSD and major depressive disorder, Dr Agnew-Davies stated that complex PTSD led to a fundamental change in an individual’s belief system and the ability to manage emotions with dissociation from events, not through a conscious choice, which would lead to that individual feeling different (for example dirty, unmarriageable, defiled or guilty in an unrealistic way) and believing that a perpetrator of violence might have “almost supernatural powers” in being able to find the sufferer and to read her mind. She stated that a majority of victims of trafficking presented with complex PTSD which she distinguished from the PTSD that is found in soldiers or victims of natural disaster.

36. Asked if there is anything that could affect the ability of the appellant to make positive choices, Dr Agnew-Davies stated that those who suffered sexual abuse were more likely to be re-victimised. Not only because abusers were predatory and targeted their victims selectively but also because it was her view that victims who had experienced inescapable abuse both physical and sexual would be less likely able to escape and more likely to be trapped than someone who had not. She believed that usual “fight” or “flight” responses were suppressed in a victim of abuse and

where such an individual had a dissociative disorder they would be likely to freeze and therefore risk being unable to run away or confront an abuser.

37. Dr Agnew-Davies stated that both appellants had high levels of avoidance/dissociation – in AM this was 99% more severe than most of the population and in BM approximately 98% more severe when considering the issue of defensive avoidance and 86% more severe than most when judged on her ability to dissociate herself from events. She stated that with regard to BM her diagnosis had remained the same between when she had seen her in 2007 and again in October 2008, although she was slightly less depressed. Dr Agnew-Davies said that it was relevant that neither woman was in counselling and both had been here for years. Her general impression was there had been no improvement.
38. She referred to what she referred to as the “Zimmermen Report” entitled “Stolen Smiles”. This stated that victims of trafficking showed minor improvements in the first few months but then continued to experience symptoms for six to nine years. She stated that these appellants were not unusual in showing a lack of significant improvement. It was her view that these appellants would avoid therapy because they did not want to think about or recall their experiences.
39. Dr Agnew-Davies referred to three stages of recovery for a woman who had suffered trafficking. The first was getting to safety both in the environment, and mentally and physically. The second was treatment for acute symptoms, including medication, and the third was dealing with long term underlying vulnerability. Neither of the appellants had yet achieved the first stage, partially because of their insecure immigration status. It was her view that if AM accepted that she had a choice to remain here and be safe there would be a minimum risk of suicide but if she were forced to return to Albania she would be operating on the belief that she no longer had a choice and would be in a similar position to that of a prisoner in a concentration camp taking a cyanide pill rather than facing torture. She emphasised that at present AM believed that she was in relative safety here.
40. Dr Agnew-Davies was then asked about whether or not a woman would voluntarily place herself back in the situation re-trafficking. She stated that in thousands of women she had interviewed she had never met one who voluntarily chose further abuse. It was her view that neither appellant was remotely ready for any sexual relationship with a loving partner.
41. Dr Agnew-Davies referred “the Stockholm Syndrome” which she said was characterised by three things – the victims would believe that there was a severe risk of harm, there was no escape and that no one would help and protect them. Therefore they were responsible for their own survival. If they were kidnapped there would be a psychological bonding with the abusers and they would accept the abusers mentality. This was not out of free will but based on a conscious effort to survive. Where women are abused the three elements of choice –the women believing they had a right to choose, being

aware that choices existed and having the skills or resources to implement choice would all be compromised. In effect the trafficker would convince the victim of trafficking that they had no right to make a personal choice. In particular women, such as the appellants, who had been taught that it was their duty to obey men, would have difficulty in making any choices against those men who would abuse them. She stated that it would be a major trigger to a high level of fear if AM thought that she had to return to her family home because of her attitude to her father and what he had done. In BM's case the situation was further complicated by the death of her father and the fact she had not begun to acknowledge her bereavement. Dr Agnew-Davies referred to a situation of "learned helplessness" where an abused woman who has been in a situation where she had been abused would no longer look for solutions to get away from their abuser. Particularly in BM's case, the fact that she had been trafficked as a child would have far longer lasting affects.

42. We also received a report from Ishah Jawaid, a Senior Outreach Worker at the Poppy Project, relating to AM's psychological concerns and setting out the difficulties returning victims of trafficking to Albania, which she referred to as a major source of trafficked victims. She referred to statements by a Mrs Latcha, Vice President of "Useful to Albanian Women" stating that the situation for returned victims of trafficking was very depressing and stating there was only one shelter "Linza" and that resources were very limited. The shelter was well known to traffickers and a good percentage of victims had been found by their traffickers at the shelter and had been re-trafficked. The shelter could only support them for six months or a year in very exceptional circumstances. After leaving the shelter women were expected to find employment, provide themselves with housing, security and wellbeing. She stated that given the stigma of trafficked women there would be little chance of reintegration.
43. We then heard evidence from Dr Stephanie Schwandner-Sievers. She has prepared an extremely lengthy report which had been updated on 19 January 2009 and was based largely on a field trip to Albania in September and October 2008, funded by the anti-trafficking office of the Office of Democracy and Human Rights in Europe, ODHIR (Warsaw). With others, she had interviewed the coordinator of the Office of the National Coordinator to Combat Trafficking in Human Beings in Tirana (the Deputy Minister of the Interior), The Centre for Legal and Civic Initiatives, an NGO providing legal assistance to Victims of Trafficking, including 3 members of staff who were psychological, legal and social counsellors, The Director of the Linza Shelter in Tirana (the National reception centre for the Victims of trafficking) , Ms Vera Lesko, the Director of the Drop In centre Vatra, in Vlora, where she also met 19 victims of trafficking, the Womens' Association in Durës and, in Tirana, she met representatives of various government offices and NGOs. She also met representatives of the shelters "Another Vision" in Elbaskan, "Different and Equal" and "Life and Hope" as well as a representative of the Organised Crime Directorate of the Albanian State Police. She also drew on meetings which she had had on other visits to Albania and referred to the report of Dr. John Davies entitled "My Name is Not Natasha" on his research among Albanian prostitutes in Lyon. Her

report contained considerable background information on the workings of the Albanian State, corruption in government and in the police and the relationship between corruption and trafficking. Although she acknowledged that one of the most notorious gangs involved in trafficking – the Durres gang – had been prosecuted she referred to the lack of protection of victims of trafficking and the lack of successful prosecution of traffickers generally.

44. Dr. Schwandner-Sievers noted that the UN Protocol had implicitly recognised “the existence of both coerced and non-coerced participation in sex work” and she referred to a “schism” between the two opposing camps in NGOs stating that:

“the first position includes the possibility of agency and consent rather than victimhood and implies that ‘sex work is work’; consequently, only if coercive deceptive and/or exploitive it should be considered part of ‘trafficking’ and as such ‘grievous violation of human rights’.

the other position, she stated,

“employs a historically rooted, more moralised position of prostitution, which is seen as never possibly consensual and consequently, relied on the concept of victimhood rather than agency”.

She referred to the research of Dr. Davies which differentiated between “wives” and “whores” –the first group being less aware of their exploitation for psychological reasons while the second knew what they were entering into and were likely to engage willingly with the traffickers. It was this last group which she indicated had become the largest group in recent years. However, it was her conclusion that:

“even Albanian women who consensually agree into sex work face coercion, deception and slavery as an integral part of the experience.”

but it was her opinion that:

“the theoretical dichotomy separating women into either victims or agents of their fate appears redundant for the Albanian case where the ‘total social opprobrium’ of women outside male control and/or rejected by their families i.e. circumstantial factors of coercion, allows agency only within and along paths that ultimately lead to further sexual exploitation and thus victimisation”.

45. Dr. Schwandner-Sievers emphasised a determination within the Albanian government and NGOs to play down the issue of trafficking because it was considered to be a “national shame”. She therefore believed that the figures were manipulated so that the problem was minimised, although it appears that even the figures from the shelters themselves indicated that the numbers being identified were dropping.
46. She refers to the Vatra report as listing the categories for recruitment as being:

"1) Women and girls, married and divorced, many with children and extremely poor, who come from rural areas; 2) girls between the ages of 14 and 18 years old; 3) Students, living on campus descending from other cities or rural areas; 4) trafficked women and girls repatriated from EU countries."

47. She referred to the report from the shelter "Different and Equal" as stating that there was a growing risk of internal trafficking. Dr Schwandner-Sievers referred to Amnesty International's 2008 Report as stating:

"According to police sources the trafficking of women and children decreased sharply in 2007, with thirteen reported cases in which the victims were women and seven cases involving children. However NGOs apparently suspected that considerably more cases went unreported."

48. She noted that the US Trafficking of Persons 2008 Report stated:

"The overall decline in victims identified [was] due to an appropriate application of national federal mechanisms for several months [in 2007] by anti-trafficking police."

The Director of "Life and Hope" which is in the south of Albania had said that in the summer and autumn of 2007 only one person had been referred to the shelter despite the fact that they normally would receive 20 to 30 cases per month referred from the border police.

49. The 2007 US State Department Report had stated that the official government statistics for 2007:

"shows an 80% decline of the number of suspected victims of trafficking, but this number is not independently verifiable."

The most recent US Trafficking of Persons Report for 2008 which had considered the situation until March 2008 referred to a slightly increased figure for 2007 – 146 victims rather than 140.

50. Dr Schwandner-Sievers quoted the Albanian Ombudsman as saying in his report for 2007 that:

"As we all know and have it highlighted in all reports made by the monitoring international institutions and bodies, in the Republic of Albania, specific laws relating to human rights implementation and protection have all been adopted... But the drafting of the new laws is not sufficient. The well implementation of the law is a basic element guaranteeing the democracy and the rule of law. It is a fact in Albania nowadays that the efficient implementation of the positive legal framework comes across very serious problems seeking for solutions. Therefore in our daily life we experience many negative occurrences of substantial violations of human rights and freedoms."

51. It was the conclusion of Dr Schwandner-Sievers that:

"...The gap between legal reform, or strategies, on paper, which serves the politics of self-representation, and the social reality on the ground does not substantially change, must be related to the following factors. First the

government of Albania has, on paper, committed itself to funding the implementation of the National Strategies Policy recommendations, but it is not clear to the present day where this money is supposed to come from. Funding problems and lack of professional capacities appear to be the most pertinent problems, generally, hindering implementation of Albania's many ambitious reforms aimed at European recognition. To the present day, all anti-trafficking work (in particular, reintegration attempts), which could have a very real impact for victims of trafficking on the ground, if at all...has been conducted by local NGOs such as, namely Different and Equal in Tirana and Vatra in Vlore. Both these NGOs are to the present day entirely dependent on international donor funding and not supported by the government in terms of funding... Secondly, apart from unsecured funding, there are also problems with professional capacities and standards not just within the government but also with the government related shelters and other agencies related to the anti-trafficking fight in Albania... Thirdly, Albania stands out worldwide in terms of severity of corruption, bribery and organised crime, and the ways in which these phenomena affect its style of government..."

52. Dr Schwandner-Sievers went on to indicate ways in which she believed state officials could be corruptly involved in trafficking either directly in running such an operation or participating in trafficking operations or indirectly by using a trafficked person, for example in prostitution or domestic help, or refusing to investigate allegations.
53. Dr Schwandner-Sievers referred to a telephone helpline set up by the Minister of Interior for victims of trafficking. However, she stated when she met anti-trafficking stakeholders who represented all the non-government shelters they had not even heard of the number.
54. When considering the issue of internal flight she stated that it was now generally perceived as impossible that a deportee from Britain could anonymously relocate in Albania because of both personal and social factors and from an administrative point of view. She had been told by the National Anti-Trafficking Coordinator, Iva Zagmi, that the border police have been trained in the procedures for dealing with deportees including from Britain at border points. The rules they had accepted included accepting the presence of a social worker, and representatives from an NGO, and using female officers during the identification interview as well as using a questionnaire, which could be followed in identification procedures. Dr Schwandner-Sievers acknowledged that a leading police readmission officer at the admission centre at the international airport had stated that questionnaires could not be used as these would insult the interviewing officer's sense of experience and expertise in the field of organised crime. He had indicated that the questionnaires were not required. He had said, however, that a representative of the shelter would be present and that the purpose of training was to get as much information as possible from victims of trafficking so that she would be identified as a victim. However, she could only be helped if she disclosed her identity and asked for help. Dr Schwandner-Sievers referred to the US State Department "Trafficking of Persons" Report 2008 which stated that authorities would only identify as victims of trafficking those who proactively identified themselves as such.

55. When considering the issue of the risk of re-trafficking Dr Schwandner-Sievers stated that:

“Given cultural prerogatives, which underpin all societal attitudes in Albania, in conjunction with the inadequacy of any other support options in Albania as well as security concerns, local NGOs and police continue to regard family reintegration and rehabilitation as the best of all available options in Albania and pursue these regardless of all the difficulties. There have been individual ‘success stories’ regarding reintegration (facilitated, mediated and organised by the foreign-donor-funded NGOs) however, these presume self-identification of the VOTs, denial of their past...and have predominately relied on family reintegration, which is not always an option or can, itself, have detrimental outcomes.”

56. She went on to state that successful reintegration “could lead to victims of trafficking to experience harm because of the cultural concept of shame even if they were returned to their families”.

57. In correspondence between Dr Schwandner-Sievers and Dr John Davies annexed to her report Dr Davies states that:

“I would argue that women do not re-enter trafficking ‘willingly’ but are structurally compelled to use trafficking routes because irregular migration has collapsed into trafficking and because trafficking options are the only way for them to pursue their actual migration trajectory and social rehabilitations through foreign marriage etc... Therefore previous knowledge of trafficking only allows them to better negotiate terms and conditions or be better prepared to leave the trafficking environment next time round... However it is policy that holds them in place to be abused... Knowing about trafficking does not reduce risk or/migration it only allows more nuanced negotiation to access the trafficking network... Because the risk is not trafficking but the total social opprobrium of being divorced or ‘abandoned’ in Albania... Using trafficking to escape such social oppression is often judged the price to be paid for a chance to rehabilitate from a marriage...”

58. Also annexed to Dr Schwandner-Sievers’s report is a transcript of a telephone conversation with Mrs Jennifer Hollinger, a CHASTE fellow at Georgetown University. She stated the highest risk groups were Roma because they were particularly marginalised in society and because of cultural factors. She went on to respond to the question of what would happen to women who were not identified as victims of trafficking on return to state:

“My assumption is (again, we don’t have hard data for obvious reasons) that they would be re-trafficked, internally or externally. There may be individual cases who find protection with their families, but I suspect that the majority of them fall into re-trafficking. They come back with no skills, and all that is left to them is prostitution in Albania as they have to feed their families and/or themselves. It is a matter of their survival.”

59. Dr. Schwandner-Sievers set out the social mores within the rigid patriarchal culture of much of Albania particularly the rural areas and among the rural areas particularly in the north. She referred to the strict code of honour embodied in the Kanun of Leke Dukagjinit (Dr. Schwandner-Sievers’ spelling is used throughout this determination), the code of conduct accepted in the north of Albania which focuses on the concept of family “honour”. She

emphasised that the definition of honour within particularly rural, Albanian society was reflected in the concept of “kurva”, which Ms Schwandner-Sievers translated as meaning “a whore”, which effectively referred not only to someone who had committed adultery or was a prostitute but also someone who had been raped or was considered to be of loose morals. She stated that this was the case:

“because it is not the notion of female consent that matters (and informs our terminological differentiations)” but the fact that all these events share the fact that the women had sexual intercourse outside the protection/control of men: their fathers and brothers before, and their husband after marriage. In other words a “whore” is a woman categorically falling outside the Albanian cultural norms of the family and accepted gender roles. According to the Kanun, “kurvinja” (sexual contact outside accepted norms) which normally is translated as “adultery” requires the killing of both parties involved, men and women, or – at best – the expulsion of the woman. Only death or exile can avert her ‘shame’ from the family”.

60. She did, however, go on to state that these cultural norms were never “strict” and people could take individual choices within the constraints of local social expectations of how they would comply with such cultural conventions. The higher the social strata and educational background the less likely was a strict adherence to traditional codes. She emphasised that, however, that the concept of “honour” was still widely accepted in mainstream Albanian family attitudes although honour killings were now considered rare in Albania.
61. She listed the anti-trafficking non-governmental organisations and shelters being Vatra in Vlore in Southern Albania, “Different and Equal” in Tirana and a further centre called “Another Vision”. Vatra had housed nineteen victims of trafficking, both women and children when the shelter was visited in 2008; and “Another Vision” had a capacity for maybe eight persons at a time. There is also a transit reception centre near the border with Greece called “Life and Hope”.
62. Finally, there was the governmental shelter known as “Linza” which defined itself as a high security centre. It did not provide long term reintegration services. It was able to house up to 100 people but was never filled even to 50% since it had been opened. She stated that “Different and Equal” reported some training possibilities for victims of trafficking and there were some attempts by non-governmental organisations to reintegrate returned trafficked women.
63. She emphasised that there was a risk of re-trafficking. She referred to Dr John Davies’ report entitled “My Name is Not Natasha” in which he set out reasons why women would submit to re-trafficking. She emphasised that the Director of the Vatra Centre had referred to victims of trafficking who had successfully reintegrated by being reunited with their families or placed in rented accommodation and found employment but said those women would normally have to deny that they ever lived in the shelter and indeed the shelter would assist them to invent a fake identity. There is clear evidence that traffickers or merely men looking for women would haunt the shelters and she

described the lack of security outside the “Different and Equal” shelter.

64. Her report set out the statistics for the women in the Vatra shelter, broadly 45% originating from the North, 40% from mid Albania and the remainder from the South. Different and Equal’s “protégés” in 2007 had originated from all parts of Albania but were most urban (67%) rather than rural. The risk from families for victims of trafficking, she had been told by the Director of Vatra, was particularly high because of the mentality of the fathers and brothers in the North. She referred to a comment from an individual from the Poppy Project which said that the Poppy Project’s Albanian protégés were exceptionally unwilling to return because of the great fears of confronting social stigma.

65. With regard to the cultural background giving rise to social stigma she referred to an OSCE Report stating that domestic violence in Albania was underreported and under-investigated, under-prosecuted and under-sentenced. Traditional societal norms considered women to be subordinate to men.

66. One section of Dr Schwandner-Sievers report dealt with the issue of “adult orphans” stating that such people, without parental or male support were particularly vulnerable to re-trafficking. Indeed one group of re-trafficked women would consider that:

“for them, re-trafficking was the only option as there would be nothing for them and no means of survival in Albania and certainly no means of ever finding a husband for them.”

67. With regard to mental health issues she referred to a European Council Committee for the Prevention of Torture or Inhuman or Degrading Treatment stating that during a visit during 2006 there was evidence of:

“the persistent failure of the Albanian authorities to implement the 1996 Mental Health Act, which includes a number of guarantees intended to safeguard the mental rights of psychiatric patients”.

68. Her report also referred to the risks for children without a father. Child trafficking was a concern in Albania and the report stated at paragraph 23 that child labour and the risk of child trafficking should be recognised as a problem of great concern. According to DIFD:

“About 32.8% of children in Albania live below minimum standards (less than \$2 per day)... Furthermore Albanian children are facing other dangers that emerged during transition such as school drop-outs, violence, blood feuds ... trafficking, exploitation and criminality.”

That report had said that children of families which do not have a father were particularly vulnerable. She emphasised that as children of unmarried mothers the children of both AM and BM would be particularly at risk and particularly socially vulnerable.

69. Turning to the position under the Kanun of women with illegitimate children, she quoted from a commentary by Gjecov on the Kanun i Leke Dukagjinit:

“According to most conservative and mostly historical Kanun traditions such a woman with an illegitimate child would incur such shame on her family and community that she should be killed: ‘a woman may be shot in the back for kurvni’” and ‘if a shamed woman or girl who is pregnant and escapes without being killed and goes to a different region both woman and child are placed under permanent ban by the banner (=community)’. If she and the child returned regardless, they regard it as a provocation to family and community honour that – according to classic Kanun she should be publicly executed or burned alive on ‘a dung heap’.”

Although she accepted the worst extremes of Kanun culture belong to the past and it was mostly “only” sexually abused women from the classic Kanun regions in Northern Albanian who had to fear their fathers or brothers for their lives, in the case of “kurva”, family rejection was the most common reaction across Albania.

70. With regard to the way in which the appellants were taken in to trafficking she stated that those forms were not unusual, and were consistent with the available background evidence. She stated that kidnapping was the typical recruitment practice but qualified that by saying:

“I have only recently learned through Davies of a study among Albanian prostitutes in France that the Albanian term for ‘kidnapping’ or “rrembej” “can be used to describe the violent kidnapping of someone against their will ... but its equally common usage is to describe the elopement of a daughter against the will of her father”.

She went on to say that a loophole in traditional marriage routines allowed a man to pick up a woman at home by way of a common law marriage and that there were some men who would exploit that loophole and not go through with the later civil ceremony. This was something that happened mainly in the north rather than in Tirana.

71. This was a “legacy of traditional ‘bride robbery practices’ in the north, which allowed a couple to circumvent the bride’s father’s cultural property rights over his daughter but could expose the kidnapped girl to similar trafficking risks (through deception) as in the case of ‘false marriage promise’. “Abduction” accounted for 53% of traffickers’ recruitment strategies for the Northern Albanian region of Lezha and 27% in the northern region of Puka in 2001. She did say it would seem unusual that the future father-in-law would be killed in the event of a traditional bride robbery but said that at the time that BM’s father was exposed to criminal traffickers such traffickers operated most violently in that region. She did, however, go on to say that Vera Lesko of the Vatra Centre, in her annual reports for 2005 and 2006, was still reporting rare cases of kidnapping.

72. In her oral evidence she referred to women who might be deceived by promised marriage and end up in a relationship of co-dependency or women

who wanted to be smuggled and have sex in order to pay back a debt and then get out– described by Dr Davies as the 50/50 contract group. Dr Davies referred to one example of a woman leaving prostitution. She referred to these women being more likely to be either divorced or abandoned and without family.

73. She quoted from the US Country Report 2002 which had said:-

“Due to the poor economic situation, many women and young girls from all over the country – particularly Berat, Fier, Lushnje, Shkoder and Vlova – were lured by men and women from organised criminal groups who promised them jobs in Italy and Greece. Some men, primarily in the north of the country, also married women and girls under false pretences and took them abroad as prostitutes. Other forms of recruitment included promises of marriage, and to a lesser extent, the selling of victims to traffickers by family members, or kidnapping, including from orphanages.”

74. With regard to the risks emanating from previous traffickers there was clear evidence that traffickers could be extremely violent. She said that if a victim of trafficking escaped or co-operated with the authorities previous threats would quickly become true. She referred to a media report in 2004 which stated that in a case where a woman had agreed to testify to police initially her father returned home in Albania to find the mutilated remains of his other daughter “splattered” around the house. A report on health risks and the consequences of trafficking of woman and adolescents by the London School of Hygiene and Tropical Medicine in 2003 had stated that the health risk to trafficked women – mostly Albanians trafficked to Italy – found “murder and death to be the major ‘health risk’ “. A report from Vatra had corroborated those findings of substantial risk of murder for victims of trafficking who escaped or who decided to collaborate with the authorities. She quotes from a 2008 report from save the children as stating:

“Traffickers may use violence, torture, rape and intimidation to control their victims. Threats against friends and family, further force the victims to comply with their demands. To make escape more difficult travel documents and passports are often taken away, and traffickers tell victims that police are involved or that they will arrest and deport them to ensure they are too afraid to escape.”

75. In her oral evidence Ms Schwandner-Sievers confirmed that although there was no general risk of trafficking for women there were groups which were more likely to face trafficking such as divorced women or women from the North. The age group of those being trafficked was rather broader than that previously noted in the country guidance case of VT in that it was not just those between 14 and 17. The primary age group for those who are trafficked she now considered to be between 17 and 19. Traffickers would prefer young girls. She stated that in Albania the term prostitute would include adultery, prostitution and rape – the issue of consent was irrelevant. Women would be blamed should they have sexual relations.

76. Asked whether or not women could rehabilitate themselves she stated that it

was clear from the report of Dr John Davies that the only way to rehabilitate themselves was seen by the women as trying to find a husband. The only way to find a husband would be to move abroad and that is why women might approach a trafficker to go abroad. She was asked by us whether or not it was extraordinary that a woman would approach a trafficker to be re-trafficked given the brutality which they would have suffered in the past. She answered that not all relationships with traffickers were brutal and there were on occasions contractual relationships – it was now the case that there were more psychological forms of violence. She accepted that wealth or indeed education would mean that a woman could avoid not only trafficking but re-trafficking. She referred to Albania being a society where people were inquisitive and particularly keen on “social positioning”: returnees would be questioned on where they came from.

77. She emphasised that children were considered to belong to the husband rather than the mother. She referred to single women on their own as being “fair game” for men and said that even she, while in Tirana, had had to invent a “family” to avoid unwanted attention. Women living without family support were perceived to be “kurva”, particularly if they have a child who was without a father. Even a widow would not live on her own – she would go back to her family or that of her husband. There was an age at which she would be able to live on her own if she had grey hair.
78. It was her view that the police were still corrupt and she said that there was little investment in police training. Albania had recently been shown to be one of the most corrupt countries in the world.
79. She gave information relating to procedures on return stating that when a single woman was returned the border police would interview her to check whether or not she was a victim of trafficking. The border police had made it clear to her that it would not be possible for a woman to hide her identity. The border police would be likely to contact the families of a victim of trafficking, because belief in the family was so strong the families would be contacted in any event despite the case that trafficking often was from families where abuse had occurred. The border police would contact the home police who would contact the family and the border police had stated the families could be at the airport within three hours. It would depend on the police whether or not they would accept a woman’s plea that they should not contact her family. If a woman objected to the border police returning her to her family they would suspect she was a victim of trafficking and she would be offered a place in the Linza shelter or possibly at Different and Equal which was also in Tirana. If a woman had a child it would be a rare occasion where the family would allow the woman to return and they might well be sent away together or kept hidden. Their presence would be a huge liability to the reputation of the father and the village. Women with children were not marriageable as they would be outside the norm. It would be possible for a woman to be told she could come home but not with the child. There was an issue of abandoned children in Albania and a woman could be forced to abandon her child, who would then be placed in an orphanage. If, in the best case scenario, both were welcomed home the child would share the blame. It would be a difficult

situation for the child as the child would have to face the gossip from others and the social ostracism. The child herself would have problems in marrying.

80. It would be unlikely that a woman such as BM would be returned to the Vatra Shelter which is in the south rather than the Linza Shelter or Different and Equal. She would only be sent to Different and Equal if she was identified as a victim of trafficking. She said it would not be possible for the community not to know the circumstances of AM's abduction given that her father had been killed.
81. Different and Equal would not accept victims of trafficking who had mental health problems into their integration programmes and those with mental health problems would not be able to stay in the shelter for a long period.
82. She was asked about micro loans under the National Anti-Trafficking Strategy and she stated that in Albania even the best strategies were undermined and little evidence of these being in any way effective. Similarly, although there were procedures for obtaining work for the victims of trafficking the reality was that local employment officers abused their positions and ensured members of their own family were employed.
83. When asked if there was any attempt to re-educate the population regarding trafficking she said there was an awareness campaign to prevent trafficking but there had been no re-education. There were deeply held views from which neither the government nor indeed the NGOs were free.
84. In cross-examination Mr Blundell put to her the figures of those who had been re-trafficked. She indicated that she believed that the non-governmental organisations accepted that these figures were understated. She accepted that there was a range of statistics and acknowledged the continued implementation of the anti-speedboat law which targeted the speedboat route by which traffickers took their victims to southern Italy from Vlore.
85. She was then asked about re-trafficking and it was put to her that there had been a significant drop. In reply to a question from us she indicated that the figures for re-trafficking from Vatra were 57% in 2005, the State Department had referred to 29.5% re-trafficked women in 2006 and Different and Equal had referred to 20.5% between 2004 and 2006. She was asked if there were any relevant statistics and she referred to figures from Vera Lesco of Vatra regarding 2007 when she was told that of the women in the shelter 20% had been re-trafficked.
86. Asked if only particular groups went to shelters she said that it was the evidence of Dr Davies that it was only the most socially inept who went to shelters. Others would not be keen to do so because they feared exposure, family reunion or community stigma.
87. She was then asked about the possibility of employment and it was put to her that the base figure was that 49% of victims of trafficking who were returned were employed and it was then put to her by Mr Blundell that the

female employment rate in general in Albania was 40%. She replied that there was a huge informal sector and for that there were no figures. That would be largely in agriculture and therefore those women, who were employed, would not be included in the statistics. Victims of trafficking who returned would not have access to that “grey” employment sector. With regard to childcare facilities she stated that there were some private facilities which were expensive but there were also some state facilities.

88. Mr Blundell then asked her about protection for witnesses. She said that she had recently been made aware of this – there had been one instance where a family had been told that they would get protection outside Albania but the government had been unable to find a country that would take them. Vatra had only had one person who had witness protection. The indications were that the courts would not accept the evidence from someone who was protected or that that individual would not want to classify themselves as a victim of trafficking.

89. Dr John Davies’ report entitled “My Name is Not Natasha” is sub-titled “How Albanian Women in France use Trafficking to Overcome Social Exclusion (1998-2001)”. It sets out his research into the experiences and attitudes of a group of Albanian women who worked as prostitutes in Lyon between 1998 and 2001. The basic conclusion, set out in the initial summary was that:-

“This thesis contends that many women were originally deceived into marriage with men who then exploited them; these deceived wives were subjugated through their exploitation to patrilocal marriages that invested in the husband the ability to make non altruistic household decisions. This meant that their migration could be understood by refining the new economics of migration model and the role of non-altruistic actors who might exploit its processes. Once the nature of trafficking networks became well-known Albanian women increasingly refused to accept such marriages. However, because other Albanian women who lacked social networks able to support them in their migration goals, many socially excluded divorced women began to use the trafficking networks as a mobility strategy in pursuit of migration goals beyond prostitution. This thesis thus argues that many trafficked women were not motivated to migrate because of economic considerations but by determination to achieve social rehabilitation through foreign marriage. These women wanted to chain migrate but their weak social networks could not sustain their intended migration. Therefore these women use trafficking as a means to reach destinations where they could build new networks and strengthen old social networks”.

90. Dr Davies interviewed 58 women and a number of the men who controlled them. He started the thesis with an analysis of trafficking but emphasised that there was evidence that the links made by many state agencies might distort the situation on the ground. For example he said:-

“While many human rights activists argue for compassionate and holistic treatment of trafficked people, their agendas are often subjugated by the State to the interests of a law enforcement agenda or migration policy priorities, such as the linking of temporary residency permits for trafficked women to them agreeing to give evidence against their traffickers. This linkage is contested and recently the Council of Europe has given its support to de-linking evidence from the giving

from temporary residency (CoE 2002). Where responses offer the victims of trafficking possible residency, a number of politicians, law enforcement agents and even refugee workers have complained that such visas are an invitation for women to falsely claim to have been trafficked.”

He pointed out that shelters in Italy, Albania and other parts of the Balkans have reported a falling number of women who want to use the centres rather than seeing increasing claims for such protection and residency. That was contrasted, he considered, with continuing reports that trafficking in the region was increasing which in turn should have led to an expectation of an increasing number of clients for such centres. He stated that many women do not seem to see “a decent job” in their home country as a satisfactory resolution of a trafficking episode. He went on to say:-

“Local television stations in South East Albania have been regularly advertising well paid jobs for women as seamstresses and hairdressers in the local region for a number of years, but many young women still express an intention to leave Albania. The urgent protestations of those who propose a human rights programme of awareness raising and recovery for trafficked women seem to lack resonance with the behaviour of some trafficked women, in particular women willing to use trafficking as a mobility strategy and especially those women who seek to be repeatedly trafficked”.

Indeed, it was part of his thesis that not only would women seek to be re-trafficked on return to Albania but that they would often claim to be trafficked women as a mechanism of achieving the ultimate aim of securing residence in another country where their economic prospects were far greater than those open to them in Albania. Moreover, he emphasised that a number of women from different countries might well be likely to be prepared to travel to work as prostitutes (he gave examples of this) but they might also claim that they have been duped by, for example, following up an advert for a waitress in another country despite the fact that such adverts would be clearly understood as a “trafficking device”. It was his view that trafficked women were not a homogenous group and that among that group there was a range of motives and naivety in the way in which they were exploited.

91. Within the context of Albania he referred to the fact that many women would claim that they had been kidnapped. He stated that in Albania “kidnapping” was often a way in which women would be taken from their parents’ home either because they wished to elope or because the family could not afford a “proper” marriage and indeed that this would be an action in which the woman’s family would be complicit.
92. He referred to a number of different groups of Albanian women working as prostitutes in Lyon, the first being the “wives” who considered themselves married to their cuni (their “husband” or pimp) but stated that “marriage” did not necessarily mean a man and woman had formally registered their marriage with the civil authorities. It was sufficient that the couple had been engaged or lived together for a few months to be considered to be a married couple. Women who had eloped with their fiancés were also considered to be married. Those women would tend to give all their income to their cuni.

93. The other main group he considered were those who were not married and were overwhelmingly “divorced” women. These were not women who had been formerly married and divorced but those who had been in a publicly known relationship with a man which had then ended. The women had then usually engaged with the traffickers for the first time at an older age than the “wives” and the most common objective was to marry a foreign husband. There was also a smaller group of women who were not divorced and were not the wives of a cuni but were older rural women who were married to non-cuni husbands still in Albania and others who wished to arrange marriages to foreigners.
94. By the end of the research period he said that the “divorced” women had become the largest group of women. He referred to a lot of the “not married” women as being in a “50% contract” which was in effect a bonded labour contract supposedly agreed for a certain period of time although this was largely a forced labour situation which made the women “trafficked people”.
95. In his section (3.4.2) headed “Repeat Trafficking” Dr Davies states that women were often deported from the EU as illegal migrants rather than returned as trafficked women. Some women from other countries even pretended to be Albanian so to avoid being returned to more distant countries. These women would do so in order that they would be able to return more easily to the EU from Albania than their own place of origin. He referred to the statement from Vera Lesko that in the Vatra rehabilitation project more than 60% had been re-trafficked.
96. In his section on “Leaving Albania” Mr Davies stated that in Albania it was Roma women and rural women who had been considered more vulnerable to trafficking. He referred to Vera Lesko of Vatra as stating that more than 60% of the victims of trafficking came from rural areas “where the backward mentality is prevalent”. He quoted her as saying:

“All the girls in the villages never enjoyed the freedom and civilisation of the girls from the city, because of the backward mentality of those areas. In order to seem emancipated they say that they live in the city ... so they say that they come from the city when in fact it is to the contrary.”

It was, however, Dr Davies’ experience that only a small proportion of women whom he interviewed had come directly from a rural location to their “trafficking episode”. A majority of the researched women had spent their whole lives or at least their formative years in urban locations before leaving Albania. One of those to whom he spoke said that it was important to appear more sophisticated because of the clients. There was some indication that the trafficker would choose the destination of a trafficked woman having taken into account her level of sophistication. He indicated that it was possible that trafficking had started for many of the women that he saw in the southern towns of such as Tirana, Feir, Barat and Vlore and that once women were proving harder to recruit in those cities traffickers resorted to recruitment in other places including rural areas and especially the rural north. One cuni

had said to him:

“I think it started in Barat and Vlore, because there the girls were more willing to go with boys and it was a way to get out of Albania and make money. The girls there could speak Italian and once they were away from their families who would know what they were doing ... who would take a girl from the village when there were so many from the towns willing to go ...?”

97. He also reported the attitudes of the women to returning to a shelter in Albania. One of the women had said to him:-

“To avoid being put in the centre (after deportation from Italy) you have to make sure you have a change of clothes and some hidden money in your bag so you don't look like a whore when you get off the boat and so you can give the police baksheesh, because if you don't you can end up having to fuck every policemen in Vlore and then spend weeks in the bloody rescue centre while they tell the whole world you are a whore. Most clever women now carry a spare set of ordinary clothes in their bag and some baksheesh when they are working to avoid being arrested in Albania and put in the centre.”

He went on to say that the researched women wanted to avoid detection and referral to the Vatra shelter so that they could avoid their families discovering about their sexual activities when the shelter contacted their families. He indicated women were relieved that they could pay the police who would let them go as they did not want to be detained against their will in the Vatra shelter. He considered that if they were there they would be stigmatised. He also indicated that women would not want to go back to their home areas because people there would know what they had been doing.

98. He indicated that many of the women had engaged with the trafficker for economic reasons and indeed that the money they had earned could be sent back to their families. However, he said that it was only the women who wanted foreign husbands who considered unemployment or poor employment prospects to have been significant in their decision to leave Albania.

99. It was his experience that the women in the group he interviewed had all had some education – they were by no means uneducated.

100. In his section relating to kidnapping he said that none of the group that he interviewed said they had been violently compelled to migrate. Although two women had claimed early on to have been forcibly kidnapped, drugged and taken illegally against their will they had later recounted these stories and described in detail how they had sought out opportunities to migrate by contacting known traffickers. One had said:

“I would tell the NGO people and the police that I had been raped by fifteen men in Tirana in Albania and drugged and that then I woke up in Italy. The NGO people believed me but the police would laugh, ... I just didn't want to admit that I chose to do this ... I was ashamed of this life ... it is better to say I was drugged and kidnapped ....

I tell everyone I was drugged and kidnapped by four men ... but as you know I came here with my cuni to make money and start a new life. I was kidnapped by love and not by drugs but this way I can say my cuni rescued me from the mafia and so there is no blame on him ...”

Noting that many reports referred to the kidnapping of women for trafficking he stated that the “forcible kidnapping” threat was an opportunistic excuse for the already increasing practice of not sending teenage girls to school to avoid a very different type of “kidnapping”. The other form of kidnapping was as a result of young women seeking to arrange love match relationships and to avoid arranged marriages. The desire of young women in Albania to escape from restrictive and repressive social practice has been increasing since 1990 and there has been a traditional backlash against their attempts to secure “freedom”. Women had referred to the difficulties of their lives in the rural area and the lack of freedom to express themselves or even to meet boys. Kidnapping a young woman for the purpose of marriage was a traditional Albanian custom which was being replaced by love matches or an arranged marriage but he said that Albanians and other Balkan marriage ceremonies still include symbolic rituals intended to represent the traditional violent kidnapping of the bride. He stated when he discussed kidnapping with the researched women many described themselves as being kidnapped and explained this by saying that they had eloped with their cuni without the consent of their family. One of them had said:-

“I think most of us were kidnapped; we did it for love, because we did not want to be married off to other men. It is better to be kidnapped in love than married in Albania ... kidnapping with your lover is the only way to escape the tyranny of the Albanian family; I don’t care about the scandal.”

101. It is clearly Dr Davies’ belief that women who contacted the shelters were not representative of the whole population of Albanian trafficked women. He considered that Roma and rural women were more likely to use the shelters and therefore those that were in the shelters did not properly represent the trafficked population. He said:-

“It is possible that the rural women who were referred to Lesco’s shelter represent a particular population who want to escape violent abuse, and others who did not have the desire or resources to avoid referral. This could mean that rural women are more likely to seek assistance from NGO’s to leave trafficking and/or that they were less skilled at avoiding contact. It was also possible that a self fulfilling prophecy is in action in that urban women are able to avoid referral and identification as trafficked because it is believed that it is the Roma and rural women who are mostly trafficked”.

102. He also wrote that:

“Awareness of trafficking has impacted on Albanian trafficking; Albanian women receive information about trafficking from various sources including returning women, the media and from formal NGO anti-trafficking programmes. The increasing awareness of the risk of abusive marriages has clearly affected the population of the researched women. However, the divorced women were not informed about using trafficking to find a foreign husband by the media or NGO programmes; this information is passed to them by other trafficked women who

returned to Albania to visit with their foreign husbands and demonstrated how such marriages often rehabilitated them in the local community. This clearly demonstrates that information received from other migrants is very important in influencing the behaviour of these women. This has implications for understanding the limitations of awareness raising programmes.

Once women had become aware of this recruitment strategy, most women were able to avoid such trafficking devices and over a period of three years, trafficking significantly changed. Instead of traffickers recruiting deceived wives, an increasing number of women sought out the traffickers to enter into contracts by which they might travel to the EC. These 50% contracts are made for some indeterminate period of time, and the women agree to engage in sex work until they can find a foreign husband. These women were the divorced and abandoned women who in Albania were subjected to social exclusion and stigma. They were women who specifically wanted to socially rehabilitate themselves by marrying abroad. They found their situations in Albania to be intolerable and had discovered that marriage abroad was a way to regain social status and acceptance by their families and local communities.”

He concluded that:

“Many are not deceived or coerced into trafficking as they proactively seek to be trafficked”.

103. He stated that those researched women who were described as “wives” were recruited by the acceptance of offer of marriage but were well aware that they were going to be trafficked. However, the 29 women who had entered into 50% contracts were mainly divorced women and those who were subject to social exclusion who were very well informed by trafficking practices and had deliberately engaged with the traffickers knowing what was likely to happen. There was some indication that since 1995 Roma women were willing to travel for sex work. He referred to those who considered themselves married to their cuni as having the objectives of building and funding a house, setting up a business in Albania, acquiring a car, furnishing the house and capitalising the business. They would consider that once these objectives had been achieved they could return to Albania and live a normal family life as a man and wife and start their own family.

104. He referred to the prevalence of domestic violence in Albania as being a serious and widespread problem and quoted Amnesty International saying that:

“Women in Albania were routinely denied their basic fundamental right to be free from violence ... In a recent survey conducted by the Women’s Association Refleksione, in Albania, more than 63 per cent of women surveyed reported that they had been abused by their husbands or partners.

An estimated one in three women in Albania have been hit, beaten up or subjected to other physical violence within their families. Some had been raped, some had been killed. Husbands, former husbands or partners are responsible for most of these acts of violence against women – abuses which are often condoned by the wider community. Violence against women is widely tolerated on the grounds of tradition, even at the highest levels of the government, police and judiciary ... Research by forensic practitioners have documented an increase in intimate

partner violence over the last five years (Amnesty International 2006 Report).”

105. A number of the women he interviewed indicated that they would return to Albania to see their families and friends.

### Submissions

106. In summing up Mr Blundell argued that neither appellant had a well-founded fear of persecution and in particular that the appellants’ case based on risk of re-trafficking was not made out, that former victims of trafficking did not constitute a particular social group because they were not sufficiently identified by Albanian society and the available evidence did not demonstrate a real risk of Article 3 ill-treatment. In any event there was sufficient state protection and internal relocation was available. Neither appellant would be at risk of an infringement of their rights under Article 8 of the ECHR on return.

107. With regard to AM he referred to Immigration Judge Kaler’s conclusion that she would be accepted back by her family because her father was a “rational” man. He stated that nothing the Tribunal had heard indicated that the country situation was such as to lead to a different conclusion.

108. Turning to the issue of whether or not there is a well-founded fear of persecution he stated that it was accepted there was not a generalised risk of trafficking for women in Albania and stated there was no evidence that the appellants in either case faced threats specifically from their former traffickers. It was therefore for the appellants to demonstrate there was something in their status as former victims of trafficking which would give rise to a real risk of persecution on return.

109. He went on to submit that there were two relevant questions – what was the quantitative risk of re-trafficking and what were the reasons for re-trafficking. With regard to the quantitative risk he referred to the US AID Report entitled “The State of Efforts in Albania to Combat Trafficking in Person 2007-2008”. It gave a figure of 44% of the victims of trafficking assisted by the non-profit organisations as having been trafficked and exploited before. The report had stated:-

“Fifty of the 114 victims of trafficking assisted had been trafficked more than once. Yet only sixty of them had been assisted previously in shelters in Albania”.

He stated that that equated to 44% and that it indicated that the work of the shelters would appear to have had a positive effect in reducing the risk of re-trafficking with only 60 of the former victims having been assisted at a shelter. He put forward the figures for re-trafficking in the 2005 Vatra report as stating that 57.5% were re-trafficked. The State Department Report of 2006 referred to 29.5% and Different and Equal referred to 20.5% between 2004 and 2006. 44% were referred to by the USAID in 2008 as having been re-trafficked but only 32% had previously used a shelter. He accepted, however, that the figures provided by the shelters could not be a precise representation of the exact number of former victims of trafficking.

110. He emphasised that the figures produced by the Vatra Centre showed a striking reduction in the number of individuals recruited from year to year. He stated that the figures did not show that former victims of trafficking returned to Albania had no choice because of social or family stigmatisation but to return to prostitution or to a situation of abuse. There was evidence that they could find other means of support.
111. He then returned to the reasons for re-trafficking submitting that in effect Ms Schwandner-Sievers was asserting that the reason for re-trafficking would be poor economic circumstances so that women felt that they had no choice but to return to prostitution. There was no evidence that that would happen in these cases because both these women had clearly made out that they would never, in any circumstances, willingly engage in sexual relations with a man. With regard to Dr Agnew-Davies' evidence he stated that we should not accept that these appellants would not be able to operate the "fight" or "flight" reaction because of their psychological state as the reality was that they had both fled in the past. Indeed, having fled they had not been at risk from their former traffickers. In any event he argued that if a former victim of trafficking returned to prostitution voluntarily that could not be considered to be persecution.
112. Having referred to the UNHCR trafficking guidelines which set out the three central interlinking sets of elements as being:

"The act: recruitment, transportation, transfer, harbouring or receipt of persons;  
the means: by threat or use of force or other forms of coercion, abduction, fraud, deception abuse of power, abuse of a position of vulnerability, or of giving or receiving payments or benefits to achieve the consent of a person having control over the victims;  
the purpose: exploitation of the victim, including, at a minimum, exploitation of prostitution of others or other forms of sexual exploitation, for labour or services, slavery or practices similar to slavery, servitude or the removal of organs."

He argued that the expert evidence relied on by the appellants which asserted that social stigmatisation and problems with reintegration would mean that the former victims of trafficking for sexual exploitation had no alternative but to return to prostitution in order to support themselves and avoid economic destitution was not made out and that such a conclusion did not flow from the evidence before the Tribunal. Even if it were correct, he stated it was plain that the pimp to whom the woman in question would turn to be re-trafficked would not exercise force or coercion or deception, the woman would return voluntarily through a conscious decision of her own without being forced or deceived into doing so and accordingly she would know she was entering prostitution and was doing so voluntarily. That would place such individuals in a separate category from victims of trafficking as they had not been actively coerced into prostitution. He stated that the trafficking protocol, at Article 3B, (set out at paragraph 4 of this determination) expressly dealt with the issue of consent as it states the consent of the victims is irrelevant if any of the means set out in Article 3A had been used. If it were the case where a woman had been deceived into prostitution then Article 3B

would bite.

113. In any event he argued that there was for trafficked women a sufficiency of protection and emphasised that it was the Secretary of State's position that there was no evidence of a real risk of either appellant being specifically targeted by former agents of persecution and no indication that those responsible for trafficking the appellants had retained any interest in them.
114. Mr Blundell argued that the judgments of the Court of Appeal in AA (Uganda) v SSHD [2008] EWCA Civ 579 and the determination in FB (Lone women – PSG – internal relocation – AA (Uganda) considered) Sierra Leone [2008] UKAIT 00090 were of no assistance to the appellants as neither examined the question of whether a forced return to prostitution amounted to persecution or treatment contrary to Article 3. They were cases which related to the issue of internal relocation and therefore dealing with a different scenario than that at issue in the present appeal. The appellant in AA had in any event no choice but to enter into prostitution – that was different from the position of the appellants in this case. He then went on to refer to the position of the appellants on return, referring to the availability of the shelters, and the various rehabilitation programmes available to victims in the shelters and the specific assistance programmes for victims of trafficking by the government. Moreover there were childcare facilities available for the appellants.
115. He also referred to the employment rates for women suggesting that the Albanian Government's initiatives clearly facilitated the employment of former victims of trafficking in the past. He referred to the EC Social Inclusion Report relating to 2007 which said the employment rate for women was 49%. He said that that figure was strikingly similar to the figure for the victims of trafficking utilising the shelters to find employment. There would be alternative occupations open to the appellants on return. He argued that there was a high level of social integration in terms of employment prospects for former victims of trafficking.
116. He stated that the Secretary of State accepted that, as a general principle, former victims of trafficking were capable of constituting a particular social group – he accepted the determination in SB (PSG – Protection regulation – Regulation 6) Moldova CG [2008] UKAIT 00002 but said that that depended on whether or not former victims of trafficking had a distinct identity in the society in question. He argued that the situation of women returned to Albania was different from that of those returned to Moldova and that victims of trafficking were not sufficiently identified by their surrounding society to constitute a particular social group.
117. Turning to the issue of sufficiency of protection, he referred to the judgment of the House of Lords in Horvath v SSHD [2001] AC 489. He accepted that the level of protection had to be sufficient but emphasised that it did not need to amount to a guarantee of protection against isolated and random attacks. The fact that Albania had been downgraded in the latest US Trafficking of Persons Report for 2008 to Tier 2 watch list did not indicate a deterioration in the scale of the problem of trafficking in Albania and in fact it was

acknowledged that the Albanian Government was making “significant efforts” to comply with the minimum standards. There had been prosecutions of alleged traffickers and seven human traffickers had been convicted. The report indicated that:

“the sentences for convicted traffickers were appropriately severe ranging from five years imprisonment with fines, to six years imprisonment with fines.”

He stated that although the Albanian Government had been criticised for allowing its anti-trafficking plan to expire that had now been replaced by the plan for 2008-2010. The report set out a number of achievements by the Albanian Government in tackling trafficking. He referred, indeed, to the fact that Britain had been selected to lead the EU police mission to Albania – a mission funded by the European Commission with a sizeable budget with the intention of developing the ability with Albanian law enforcement institutions to improve policing capability in this area.

118. Turning to the individual cases he stated that with regard to BM there was no evidence of continued hostile interest from BM’s traffickers. There was no evidence that her mother had been threatened since August 2005 and no personal connection between the traffickers and BM. There was no indication they had any inclination to find her either in her home area or elsewhere in Albania given the time passed. As she had not been bought there was no evidence that she would be viewed as having caused her traffickers to lose money. She would be returning to Albania, in any event, with professional skills. Though she has been diagnosed with mental health needs these could be met in Albania.
119. With regard to AM’s appeal, he submitted there was no evidence that she was still being actively sought by her former fiancé and traffickers, there was no evidence of any threats from those traffickers since she had been in Britain - a significant factor since A and N had apparently accompanied her here and, although she had mental health needs there was no reason why these could not be met appropriately in Tirana.
120. Mr Blundell emphasised that Albania was a country with a population of 3.6 million inhabitants and that there were a number of organisations offering support, in the various shelters as well as child care facilities. The government ran various programmes to assist women returning to Tirana and that it would therefore not be unduly harsh for the appellants to relocate there instead of returning to their home areas.
121. With regard to Article 8 he said it was accepted that both appellants suffered from complex post traumatic stress disorder, but the Council of Europe’s Commissioner for Human Rights had described as highly positive the situation with regard to mental health provision in Albania in that there had been steps taken in Albania to improve psychiatric healthcare. A Mental Health Officer had recently been appointed by the Ministry of Health.
122. Although the US State Department noted negative observations made by the

Ombudsman following his visit to mental health institutions, the treatment of those issues was brief and was detailed in the report by the Council of Europe's Commissioner. He argued that Dr Agnew-Davies indicated that there was only a "mild" risk of suicide in AM's case at present and no present risk in BM's case.

123. Turning to the issue of suicidal ideation his initial skeleton argument had referred to the relevant five part test in the judgment of the Court of Appeal in J v SSHD [2005] EWCA Civ 629 but he accepted that that had been modified by the judgment of Sedley LJ in Y (Sri Lanka) v SSHD [2009] EWCA Civ 362. He argued however, that the particular circumstances of the appellants did not mean that their removal would be a breach of their rights under Article 3 of the ECHR. In so far as there would be an infringement of their right to private and family life here removal would, in any event, be a proportionate response in both cases.
124. In reply, Mr Jones emphasised that there was a significant problem of re-trafficking and that there was clear evidence that trafficked women would be unlikely to be accepted back into their family homes and that they risked exclusion from society. He argued furthermore that there was not a sufficiency of protection for women who were re-trafficked and that the various state initiatives had achieved little success.
125. He went on to refer to the psychological make up of victims of trafficking and submitted that victims of trafficking did form a particular social group who shared a common background. He asked us to place weight on the evidence of Ms Schwandner-Sievers that trafficked women would be blamed for the shame they brought on their families and their community. A woman without support would also be particularly socially exposed.
126. He argued that internal relocation was not reasonably available to victims of trafficking and in particularly not appropriate for these appellants, given their psychological condition.

### The Legal Framework

127. In considering this appeal we note the legal framework established by the Refugee or Person in Need of International Protection (Qualification) Regulations SI2006/2525 (the "Protection Regulations") and the Statement of Changes in Immigration Rules CM6918 (the "amended Immigration Rules"). Together, these implement EU Council Directive 2004/83/EC on minimum standards for the qualification status of third country nationals or stateless persons or refugees or as persons who otherwise need international protection.
128. Regulation 5 defines "acts of persecution" as follows:
  - "5(1) In deciding whether a person is a refugee an act of persecution must be:
    - (a) sufficiently serious by its nature or repetition as to constitute a severe

violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or

- (b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a).

5(2) An act of persecution may, for example, take the form of:

- (a) an act of physical or mental violence, including an act of sexual violence;”

129. The Regulations set out the right of a person to be considered as to his or her eligibility for humanitarian protection. Paragraph 339C of the amended Immigration Rules states:

“339C. A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:

- (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
- (ii) he does not qualify as a refugee as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006;
- (iii) substantial grounds have been shown for believing that the person concerned, if he is returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
- (iv) he is not excluded from a grant of humanitarian protection.”

130. The paragraph goes on to give a definition of serious harm:

“Serious harm consists of:

- (i) the death penalty or execution;
- (ii) unlawful killing;
- (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
- (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.”

131. The Protection Regulations also set out, inter alia, definitions of actors of persecution or serious harm and actors of protection. Regulation 4 states:

- “(1) In deciding whether a person is a refugee or a person eligible for humanitarian protection, protection from persecution or serious harm can be provided by:

- (a) the State; or
  - (b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.
- (2) Protection shall be regarded as generally provided when the actors mentioned in paragraph (1)(a) and (b) take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the person mentioned in paragraph (1) has access to such protection.”

132. Paragraph 339O of the Immigration Rules deals with the issue of internal relocation.

**“Internal relocation**

339O.- (i) The Secretary of State will not make:

- (a) a grant of asylum if in part of the country of origin a person would not have a well-founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
- (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.

(ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.

(iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.”

133. We also note that under Regulation 6 of the Refugee or Person in Need of International Protection Regulations 2006 it is stated:

“6(d) A group should 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 shall 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; ...”

We also note in particular the terms of Rule 339K of the Immigration Rules which states that:

“339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats such persecution or such harm, would be regarded as a serious indication of a person’s well-founded fear of persecution or real risk of suffering serious harm unless there are good reasons to consider such persecution or serious harm would not be

repeated.”

134. Where below we refer to ‘risk’ or ‘real risk’ it is to be understood it is an abbreviated way of identifying respectively: (i) whether on return there is a well-founded fear of being persecuted under the Refugee Convention; (ii) whether on return there are substantial grounds for believing that the person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules and (iii) whether on return there are substantial grounds for believing that a person would face a real risk of being exposed to treatment contrary to Article 3 of the ECHR.

## Discussion

### Approach to the evidence

135. We have set out in paragraph 4 above the definition of trafficking and the evidence not only of these appellants but also from Dr Agnew-Davies, Dr Schwandner-Sievers and in the report of Dr Davies. While Dr Schwander-Sievers and Dr Agnew-Davies emphasised the horrific way in which women who were trafficked were treated and their powerlessness both in the relationships with the traffickers as well as with officials and their families, Dr Davies’ thesis indicated that for many of those trafficked there was an element of free will both in their relationships with their cuni but also in their dealings with the authorities in the countries to which they were trafficked and in Albania and, indeed with their own families.
136. At the beginning of her report Dr. Schwander-Sievers referred to the two approaches to the issue of prostitution: firstly, that the prostitute was always the victim and secondly that “work is work”. Although that shows an unduly sharp contrast in approach we accept that the reports and the research before us reflect the attitudes of those interviewed and the writers of the reports. In considering the evidence before us we are aware that much of the research, in Albania, has been based upon interviews with the women in the shelters and those that work in the shelters. We are satisfied, however, that the women in the shelters are not representative, as they are the least worldly and possibly the most vulnerable of trafficked women, and moreover, that those that work in the shelters and those that had contact with them, such as those who work for CHASTE, may have a particular perspective. Dr. Davies’ report clearly indicates a different perspective when he quotes from what the women he interviewed themselves said. We note the comment by Dr Davies in his email of 30 November 2008 to Dr Schwander-Sievers where he states:

“.... How “willing” anyone is to do this .is really about what sustainable opportunities they have to choose from and frankly I don’t think a moralist like Lesko understands what many women are “willing” to do to escape endless social repression...”

We have therefore taken into account the perspective of the writers of the various reports which were before us when considering the evidence.

Ways in which women and girls enter trafficking and those who are most vulnerable trafficking

137. From the evidence before us we conclude there is clearly a wide spectrum of ways in which women and girls are taken into or enter into trafficking. These range from simple abduction where women may be kidnapped from their homes, which is now becoming rare (although there is an indication that children from orphanages are a vulnerable group), to women being duped by a false job offer or by a false promise of marriage where a woman is misled into believing she is to marry the trafficker. However, there is evidence that, increasingly, there are women who are complicit with the trafficker, possibly either as “wives” or on the “50/50 basis” described by Dr Davies, for either economic reasons or because they see the arrangement as being a way to escape from an abusive or traditional family, and who decide to travel abroad, possibly to find a foreign husband in the hope that they will be rehabilitated on return to Albania. Dr Schwandner-Sievers indicated that those who are abducted or lured because of a false job offer are likely to have been virgins and the most likely age group is between 14 and 20 – although it appears that the age of those likely to be trafficked is getting older. It is not just young women who are trafficked – women without protection such as divorced women or widows might also be trafficked. The attitudes of many of the women who are trafficked are themselves complex and those do not necessarily fall clearly into the definition of trafficking to be found in the UN Protocol to which we have referred above.
138. It is arguable that, although women are trafficked from all over Albania, Roma and women and girls from the north are particularly vulnerable of being duped or abducted by traffickers. That appears to be largely because the north is a more traditional area where girls are kept separate from males outside the family and may well not have the opportunity to go onto a secondary school, being kept at home until marriage. It is an area where arranged marriages are common and where a woman is unlikely to be able to make her own choice of husband.
139. However, Dr Davies’ report indicated that the women he interviewed were from towns. It is, therefore, unclear where the majority of trafficked women are likely to have come from and, indeed, there is evidence that the origin of the women is changing from the countryside to the towns although even that is unclear given that many from the countryside hold out that they are from the towns as they see that as being a sign of sophistication and therefore a way of getting better treatment or better clients.
140. It was also clear from the papers before us that Albanian society is male dominated and that domestic violence towards wives and daughters is prevalent. It may well be that young women, particularly from the country districts, accept that there will be violence within their relationships with men. It is also clear that poverty influences the attitudes of families towards their children. Within the documentary evidence before us there is an article entitled “A child for a television” detailing how one poor family decided that they would trade their baby for a television. There is also some evidence that

fathers might be pleased to connive with the trafficker to take daughters off their hands if they considered that their daughter's behaviour might bring dishonour on the family.

141. It must be noted however, that, in rural communities it was not uncommon for a girl to be "kidnapped" as a means of eloping without the express or articulated consent of her father or with the agreement of her family as a means for a poor family to "marry" off their daughter without having to pay for an elaborate wedding. Although kidnapping is the terms which was used in that context must, of course, be distinguished from a situation where woman is abducted.
142. Although it appears that the relationships between the women and the traffickers, their cuni or pimps is often violent it is clear that there is a spectrum of violence in the relationships between those who are forcibly abducted against their will and those who are complicit in the trafficking.

The change in the methods of traffickers and the society in which trafficking takes place

143. It was also clear from the papers before us that the methods of traffickers and the society in which trafficking takes place has changed significantly in Albania over the last 20 years. Dr. Schwander-Sievers said that AM's abduction was not unusual when she was taken in 2002 but would be unusual now. The social upheaval at the beginning of the 1990's caused traditional Albanian society to fragment and there has been increasing depopulation of the countryside, particularly of the north. In the cities there is more freedom for women and greater economic power. There is also greater awareness of the dangers that a woman might put herself in by, for example, answering an advertisement for a job as a waitress in Italy. The Government and NGOs inform the public of the dangers which young women might face. There is also an indication that there is now less need for traffickers to abduct women as there are women who are prepared to approach them and therefore the trafficker would not need to take the risks inherent in abducting a woman for trafficking and the possible criminal charges, that, theoretically at least, might follow.
144. It appears to be accepted that the numbers of women coming to the EU for prostitution have either increased or, at least, have not fallen. However, the number who use the shelters has dropped. One reason for this appears to be that the women who are returned to Albania take steps to ensure that they are not referred to the shelters and are not categorised as victims of trafficking. Many, it appears, wish to get back to what they had been doing before as soon as possible, others do not want the stigma of living in a shelter, let alone the restrictions that are imposed on those who are given places in a shelter.

Possibility of re-trafficking

145. Although there was some considerable debate about the percentages of

victims of trafficking who are re-trafficked, the lowest percentage appeared to be 20%. However, we consider that even that figure is unreliable, for the reasons set out above, and it is therefore extremely difficult to reach any clear conclusions about the number of women who are re-trafficked let alone the number who are re-trafficked against their will, particularly given that the figures of re-trafficked women using the shelters is high but that they may well not be a representative group. All that can be concluded is that there is evidence that some victims of trafficking have been re-trafficked and that of those re-trafficked some are forcibly re-trafficked against their will.

146. However, as we have seen, there is a wide range of ways in which women are trafficked from Albania and there is evidence that women who have worked abroad may wish to return to what they consider to be a preferable way of life to living in poverty in Albania. We accept that there may be some women who return to traffickers voluntarily because they wish to leave Albania, possibly because they feel that their position is so compromised there as “kurva” that it would only be outside Albania they would be able to find a husband. We also accept that there may be some women who work with pimps on a “50/50” basis where in their own minds they consider themselves as an equal of the pimp and, of course, there are those who look on themselves as the “wife” of their cuni and would wish to return to him. While it is arguable that the fact that women might act in that way would be likely to be a reflection of the psychological damage which has been done to them by being trafficked in the first place, in so far as it is their decision to be re-trafficked, then, taking into account the terms of sub-paragraph (b) of Article 3 of the UN Protocol we consider that such arrangements may still fall within the terms of the Protocol.

#### The psychological effect of being trafficked on victims of trafficking

147. In all claims for asylum it is important to consider the circumstances of the individual claiming asylum including their strength, age, gender and psychological make up. In assessing whether particular circumstances are such as to amount to persecution or, indeed, whether internal relocation is for the individual unreasonable or unduly harsh it is necessary to be aware of the effect that any set of particular circumstances would have on the particular appellant.
148. At the most violent end of the trafficking spectrum it appears that the initial period involves “breaking in” of the victims of trafficking by their abductors including multiple rapes, extreme violence and imprisonment. It is likely that many of these women are from poorer backgrounds and may well be virgins who have had little contact with men other than fathers and brothers before they were trafficked. Their abduction itself is likely to have been violent. Once trafficked the victims of trafficking are likely to be denied freedom of any sort and are forced to have sexual relations with men with whom they would not willingly have entered into any form of relationship. There is a likelihood that such treatment will go on for some considerable time.
149. It is therefore not difficult to see that such treatment would make those victims of trafficking feel dehumanised and it is little wonder therefore that, as found

by Dr Agnew-Davies in these cases, that they are likely to suffer complex post-traumatic stress disorder and psychological damage.

150. Particular weight must therefore be given to the mental state of a victim of trafficking not only when considering whether or not a victim of trafficking might face persecution in her home area but also when considering issues such as internal relocation or her Article 8 rights.
151. It is hard to reconcile the evidence of Dr Agnew-Davies that no woman who has been trafficked would ever voluntarily be re-trafficked again with the evidence of the women who were interviewed by Dr Davies. We accept that those who have been brutalised in the process of being trafficked and who have suffered the complex PTSD which Dr Agnew-Davies referred to would be unlikely to be willing to be re-trafficked. We also accept that there is a real propensity for violence in any relationship between trafficker and the trafficked.

#### Circumstances on return to Albania

152. On return to Albania a victim of trafficking will be interviewed by the border police. However, the evidence that Dr Davies put forward was that the more sophisticated women would try to ensure that they were not identified, whether correctly or not, as victims of trafficking by having a change of clothes in their bags and being able to bribe the police to ensure that they were not held at the border. Dr Schwandner-Sievers said that the police were of the view that a woman would not be able to hide from them the fact that she had been trafficked, but we find persuasive the comments made by the woman who had been interviewed by Dr Davies who indicated that the more sophisticated would either be able to enter Albania without difficulty or would pay a bribe to the border police so as not to be detained or referred to a shelter. Dr Schwandner-Sievers said that the police had told her that they would contact the woman's family probably through the local police and that in many cases the families would come to pick up the victim of trafficking and may take her back to the family home. If that happens we accept the evidence of Dr Schwandner-Sievers that it is likely, certainly in the more traditional parts of the country that, if such a woman is taken back that she will be kept hidden away, although in those cases where the family have been complicit in the trafficking of the women or are relying on the money that she is sending back it would be likely that they would assist her in again leaving the country. If, however, the family had not been complicit in the removal of the woman and did not want to assist her, those relatives might well then endeavour to ensure that the victim of trafficking was disposed of, probably through marriage, as soon as possible. Dr Schwandner-Sievers stated, however, that Albanian society is one where there is considerable gossip particularly in the villages and so it would not be possible for families to avoid others in their locality knowing that their daughter had been a victim of trafficking, and suffering the shame and dishonour which that would bring on the family.
153. For those reasons there will be cases where families reject the victim of trafficking. She would then have to make her own way to another locality.

154. It is clear from Dr Schwandner-Sievers' evidence that if a victim of trafficking has a child there would be cases where a family would not accept the child back as it would be a visible reminder of the fact that their daughter or sister was "unclean". In extreme cases children can be abandoned. There is evidence that in the past honour killings have taken place when a daughter or sister is considered to have dishonoured the family by her conduct even though she was the victim of rape. However, the evidence indicates that such "honour" killings are now very rare indeed.
155. On return, if the victim of trafficking does not agree to go to her home or does not disclose where she came from, the border police are able to direct the victim of trafficking to a shelter. If that is the case, as the border police are not empowered to detain a returnee for any length of time, she will not be detained. Where the victim of trafficking decides that she does not wish either to return to her home or to go to a shelter the police would not be able to force her to do so.
156. If the victim of trafficking does go to a shelter then there are some rehabilitation programmes where attempts are made to find work for the victim of trafficking and even, it appears, a system of micro loans to enable the victim of trafficking to set up in business. Dr Schwandner-Sievers was sceptical of these programmes and of the ability of the victim of trafficking to hold down a job. Although we accept Mr Blundell's proposition that the statistics indicate that the numbers of victims of trafficking who are able to find work is in the same proportion as applies to the female population as a whole, we also accept the argument that the figures of women in work in Albania in general is much higher because of the "grey" economy as a very large proportion of women work on the land, an alternative to formal employment that would not be available to a victim of trafficking who chooses not to return to her family.
157. Dr Schwandner-Sievers emphasised that the reality of these various programmes was still that it would be difficult for any woman without family backing to get a job, that the agencies would be likely to ensure that jobs went to family members and that societal discrimination would mean that anyone who is thought of as "kurva" would be shunned and have difficulties in integrating at work. Moreover men in workplaces would be likely to harass any woman who did not have family protection and this would be exacerbated in a situation where it was known that the woman had come from abroad. She indicated that the shelters were themselves insecure and that men, knowing that they housed victims of trafficking, would be likely to prowl around the centres looking for women.
158. We find that it is clear from the evidence that a victim of trafficking, especially if accompanied by a small child, would find it significantly more difficult to achieve re-integration into Albanian society than would be the case in many other countries. But that does not mean that all such victims of trafficking will fail to re-establish themselves. Each case will turn upon its particular facts. Among the features or characteristics that will be relevant to such an assessment are these:

- 1) The social status and economic standing of the appellant's family;
- 2) The level of education of the appellant and her family;
- 3) The appellant's state of health, particularly her mental health;
- 4) The presence of an illegitimate child;
- 5) The area of origin of the appellant's family;
- 6) The appellant's age.

We note that among the group who were interviewed by Dr Davies many hoped to return to Albania to build homes, have children, and set up in business. We consider women from wealthier backgrounds or those who are better educated would find it easier to reintegrate. Women from those groups would, however, be far less likely to be trafficked in the first place.

159. It is clear that trafficking is a serious problem within Albania and that Albania is a country with a high level of corruption. Although we accept that there is certainly some statutory protection for trafficked women, we consider that the level of corruption is such that notwithstanding that there have been prosecutions, traffickers may sometimes appear to operate with impunity. We accept that there is now the "speedboat law" which has stopped the route taken from Vlora to Southern Italy but it appears that although there may now be less trafficking, by speedboat, across the Adriatic to Southern Italy, other routes such as through Kosovo and through Greece have opened up.

#### Victims of trafficking as members of a particular social group

160. It was the respondent's argument before us that victims of trafficking were not members of a particular social group and therefore would not, in any event, face persecution for a Convention reason. Mr Blundell accepted that former victims of trafficking and former victims of trafficking for sexual exploitation were capable of being members of a particular social group. Both counsel referred to the determination of the Tribunal in SB (PSG – Protection Regulations – Regulation (6) Moldova CG [2008] UKIAT 00002. That determination also put forward a conclusion, with which we agree, that former victims of trafficking for "sexual exploitation" can be considered to be members of a particular social group in one country but not in another. In SB it was concluded that former victims of trafficking for sexual exploitation did have a distinct identity in Moldova because the group was likely to be perceived as being different from the surrounding society.

161. Mr Blundell, however, argued that the situation in Albania was different. He referred to the judgment of Rix LJ in Chun Len Liu v SSHD [2005] EWCA Civ 249 and said that there were three methods of identification of a particular social group: discrimination – even discrimination amounting to persecution provided that is not the sole method of identification; recognition or perception by the surrounding society in general that the group in question shared a particular characteristic or objective observations of the distinguishing characteristics. Mr Blundell argued that there was nothing in the situation of victims of trafficking in Albania to indicate they would be identified by Albanian

society at large. It would not be considered that they shared a particular social characteristic and the discrimination which they might suffer would be because they were merely part of the larger group of “kurva” – those who would be considered to be of loose morals within the context of the standards of behaviour which were expected of Albanian women. The definition of “kurva” was applied because of some sexual act outside marriage. It is not specific to former victims of trafficking but could include, for example, adulterers. He argued that there is nothing in Albanian society to suggest that individuals who had been trafficked would be viewed collectively in that way. There was therefore no specific identification of former victims of trafficking by society as a distinct group. Although he accepted that victims of trafficking often faced significant stigmatisation from their families and society there was no further evidence provided to explain the extent of the stigmatisation as alleged or of what it consisted. There is no reference to such stigmatisation in the US Trafficking of Persons Report of 2008.

162. Mr Blundell referred to a letter from the Foreign and Commonwealth Office dated 14 October 2008 (page 171 RB(iii)) which expressed the view that there was no discrimination against victims of trafficking on the part of the State, although they might face this from their own families or communities. He argued that the letter indicated that this was more a problem in rural areas rather than cities. He also pointed out that the letter indicated there was nothing to prevent single women with children from integrating into Albanian society. He emphasised also the government did not prosecute victims of trafficking and refrained from discriminative treatment against them.

163. The arguments put forward by Mr Jones referred to the speech of Baroness Hale of Richmond in Hoxha [2005] UKHL 19 where she had said:-

“37. If what they fear is capable of amounting to persecution, is it for a Convention reason? It is certainly capable of being so. In R v Immigration Appeal Tribunal and Another ex parte Shah [1999] 2AC 629, this house held that women in Pakistan constituted a particular social group, because they shared the common immutable characteristic of gender and were discriminated against as a group in matters of fundamental human rights, for which the state gave them no adequate protection. The fact of current persecution alone is not enough to constitute a social group; a group which is defined by nothing other than that its members are currently being persecuted would not qualify. But women who have been the victims of sexual violence in the past are linked by an immutable characteristic which is independent of and the cause of their current ill-treatment. They are certainly capable of constituting a particular social group under the Convention.”

164. Mr Jones argued that that formulation supported a proposition that it was possible for individuals who shared a past experience to show they were linked by an immutable characteristic which is capable of being independent of and the cause of their current ill-treatment. He referred to the general conclusions in SB these stated as follows:-

“(d) Summary of General Conclusions:

112.(a) (i) Given that the family is a quintessential social group which exists independently in society it is not necessary to invoke any

other characteristic or circumstances in order to define it. This means it is not necessary to show general discrimination as an identifying characteristic of the group. If, contrary to our view, discrimination is necessary, then the feared future act(s) of persecution can provide the necessary discriminatory element without falling foul of the principle that the group must not be solely defined out of fear of persecution because the family exists as a social group;

- (ii) Similarly in cases where the members of a social group share a common background which is an immutable characteristic which they cannot change (for example the sharing of a common past experience) or they ought not to be required to change, then if the common background defines a group by giving it a distinct identity in the society in question which is nothing to do with the actions of the future persecutors, then the group exists independently of the feared future act(s) of the persecution and circularity is avoided. It is not necessary to show general discrimination as an identifying characteristic of the group. If an element of discrimination is necessary, it can be provided by the fear of act(s) of persecution without leading to circularity.
- (b) Where the particular social group relied upon is a broad one of gender or a group with gender based identifying features, then discrimination in the wider sense against a gender must be shown to exist as an identifying feature of the group.
- (c) “Former victims of trafficking” and “former victims of trafficking for sexual exploitation” are capable of being members of a particular social group with Regulation 6(1)(d) because of their shared common background or past experience of having been trafficked. MP Romania should no longer be relied upon, as it was wrongly decided. However, we emphasise that, in order for “former victims of trafficking” or “former victims of trafficking for sexual exploitation” to be members of a particular social group, the group in question must have a distinct identity in the society in question.
- (d) The adjunctive “and” in Regulation 6(1)(d) of the Protection Regulations should be given its natural meaning.
- (e) In the context of Maldovian society a woman who has been trafficked for the purposes of sexual exploitation is a member of a particular social group within Regulation 6(1)(e) the particular social group in question being a former victims of trafficking for sexual exploitation.”

165. The central issue therefore before us is how former victims of trafficking for sexual exploitation would be identified in Albanian society. We accept that they would be treated as “kurva”, that is women who are considered not to comply with strict Albanian mores of how to conduct themselves. But clearly the social group of which they are members is much narrower in that what they share is the immutable characteristic that they have been trafficked. Moreover, we accept the evidence of Ms Schwandner-Sievers that Albania is a country with a small population (approximately three and a half million), that it is a society where there would be an attempt by those with whom the victims came into contact, either officially, starting with the border police or when they

attempted to find work or merely acquaintances whom they would meet, to place them within their family context and to endeavour to find mutual acquaintances. The fact that they had been trafficked would be an obvious inference that would be drawn by the wider population if they went to a shelter and where in that shelter for some time. Not only do they share that characteristic but that is a characteristic by which they would become known in the wider society. Certainly, in the eyes of those who would be most likely to be the actors of persecution - those who had trafficked them in the first place they would clearly be considered to be members of a particular social group – those who had been trafficked by the traffickers and therefore those whom the traffickers might consider to be either their chattel or to be a danger to them.

- 166 We conclude that just as trafficked women would be considered to be members of a particular social group in Moldova victims of trafficking in Albania would, applying the dicta of Baroness Hale in Hoxha would be members of a particular social group.

Likelihood of persecution or treatment contrary to the victim of trafficking's rights under Article 3 of the ECHR of the victim of trafficking and the issue of sufficiency of protection

167. It was not argued before us that the Albanian State could be considered to be an actor of persecution, nor indeed was it argued that the Albanian people in general were actors of persecution. Rather it was argued that both the traffickers from whom the victims of trafficking have escaped, other traffickers and, in some cases, the families of the victims of trafficking were possible agents of persecution. It was further argued that there was not a sufficiency of protection for this particular social group. It was also argued on behalf of the appellants that the lack of support on relocation to Tirana would amount to a breach of their rights under Article 3 of the ECHR.
168. We now turn to the persecution or ill treatment which victims of trafficking might, on return, face. We first consider whether or not victims of trafficking would, on return, have a well founded fear of those from whom they have escaped. While we accept Dr. Schwandner-Sievers contention that traffickers are by their very nature violent and that the danger of being murdered by the trafficker is, according to the information supplied by Vera Lesko of Vatra, high, we consider that the issue of whether or not they would pursue the victim of trafficking who had escaped from them or been returned is an issue which must be fact specific. It depends on the relationship between the trafficker and the victim of trafficking. The trafficker may well consider that there is no point in pursuing a woman who has escaped given that there are others who are willing to engage in “50% arrangements” or, alternatively might consider that unless the victim of trafficking is pursued and “punished “ others they have trafficked might decided to flee. Traffickers might well want to ensure that their methods and the structure of their organisation are not known to the authorities. They might well therefore feel that they would not want the victim to be at large. In cases such as that of AM, where her father was killed, the traffickers might not want the victim to be free to testify against them. The trafficker who acts on his own or with one or two accomplices is less likely to

be able to either re-traffic or hurt the victim of trafficking than the trafficker who is part of a large gang.

169. It is possible that, in cases where there has been a “false marriage promise” that the woman’s family might well feel, particularly in rural areas, that they should ensure that their daughter or sister is returned to the man to whom she was betrothed. The trafficker might well consider that he was entitled to the return of their “wife”.
170. Secondly, we consider whether or not there is likely to be persecution from traffickers with whom the victim of trafficking has not come into contact in the past. We accept that victims of trafficking are psychologically vulnerable and we accept Dr Schwander-Sievers’ assessment that traffickers do look for victims of trafficking at the shelters and that single women, without protection may well be harassed. Women who have been trafficked are likely to appear an easier target than those who are supported by a social network. However, as we have stated above, we consider that the profile of women who are trafficked is changing. Kidnapping or abduction is now rare, particularly in the towns. Victims of trafficking who were duped into being trafficked by a “false marriage promise” or by accepting the prospect of working abroad are unlikely to be taken in the same way again.
171. In certain circumstances the family of the victim of trafficking may take action against the victim which amounts to persecution, a factor which might well mean that she would not be able to return to her home area. If the victim comes from a rural area, particularly in the north of the country, she is more likely to face persecution from her family – in very extreme and rare cases that could lead, because of the family’s adherence to the Kanun of Leke Dukagjinit and the code of “honour” therein, to the victim of trafficking being killed or forced to commit suicide. In most cases, however, it appears that the societal discrimination that the victim of trafficking is likely to suffer would mean that she would not be able to live a “normal life” even by the standards of the lives of women in those rural areas. That is, she would not be allowed out of the house and there is a real risk that her father or brothers would find a husband for her who is not one whom she herself would choose or would consider desirable in any way. Being forced into marriage is certainly capable of amounting to persecution. Additionally, where the victim of trafficking has a child, if it is considered that the family’s sense of “honour” meant that a daughter could not live in the family home with an illegitimate child, that could lead to the family separating the child from the victim of trafficking. That too would amount to persecution.
172. We have considered the issue of the general societal discrimination because the appellant was “kurva”. We do not consider that that in itself would amount to persecution. There was considerable evidence that there is discrimination in the employment market and that women on their own would be pestered – we note that Dr Schwandner-Sievers stated that, she herself, had to “invent” a family who would protect her to avoid undue attentions from young men in Tirana. We do not consider, however, that any discrimination which may be faced by women because they are on their own in Tirana would reach a level

where it could either amount to persecution or treatment contrary to their rights under Article 3 of the ECHR.

173. It is argued that women in Tirana – either those that came from Tirana or those who went to Tirana as a place of internal relocation - without family support would suffer such deprivation that it would amount to persecution or treatment contrary to their rights protected by Article 3 of the ECHR. While we accept that there is discrimination and that family connections are the usual way to obtain work, that there is a shortage of housing and that day-care facilities for children are inadequate, it is the case that there is work, there are programmes to get women who are returned victims of trafficking back into the work force and there is some form of social benefits for those that are destitute. We do not therefore conclude that a woman returned to Albania, on her own, would face treatment contrary to her rights under Article 3 of the ECHR. In reaching that conclusion we note the terms of the determination of the Tribunal in MK (Lesbians)\_CG UKAIT 00036 with which we agree on this issue.

174. Both counsel before us addressed us on the issue of whether or not a victim of trafficking returned to Albania would be forced to become a prostitute, referring to the judgment of the Court of Appeal in AA (Uganda) v SSHD [2008] EWCA Civ 579. We do not consider that there is any parallel in this case with the circumstances of the appellant in AA. In Albania, there is the availability of work other than prostitution for single women. The victim of trafficking, on return to Tirana can access a shelter and is not left on the streets; there will be assistance in finding work and there is some State support. That is very different to the situation of a woman who returns to a country where there is no support from the State and prostitution is the only way in which she can prevent herself becoming destitute.

#### Sufficiency of Protection

175. We must consider whether there is a sufficiency of protection which prevents there being a real risk of former victims of trafficking being re-trafficked or harmed by their former traffickers. We note the relevant test in the judgment Lord Hope in his speech in the House of Lords in Horvath [2001] ACT 489 where he said:

“I consider that the obligation to afford refugee status arises only if the person's own state is unable or unwilling to discharge its own duty to protect its own nationals. I think that it follows that, in order to satisfy the fear test in a non-state agent case, the applicant for refugee status must show that the persecution which he fears consist of acts of violence or ill-treatment against which the state is unable or unwilling to provide protection. The applicant may have a well-founded fear of threats to his life due to famine or civil war or of isolated acts of violence or ill-treatment for a Convention reason which may be perpetrated against him. But the risk, however severe, and the fear, however well-founded, do not entitle him to the status of a refugee. The Convention has a more limited objective, the limits of which are identified by the list of Convention reasons and by the principle of surrogacy.”

176. In his judgment Lord Clyde quoted with approval what was said by Stuart-Smith LJ in the Court of Appeal. He said:

“There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actions contrary to the purposes which the Convention requires to have protected. More importantly there must be an ability and a readiness to operate that machinery. But precisely where the line is drawn beyond that generality is necessarily a matter of the circumstances of each particular case.

It seems to me that the formulation presented by Stuart-Smith L.J. in the Court of Appeal may well serve as a useful description of what is intended, where he said [2000] INLR 15, 26, para. 22):

"In my judgment there must be in force in the country in question a criminal law which makes the violent attacks by the persecutors punishable by sentences commensurate with the gravity of the crimes. The victims as a class must not be exempt from the protection of the law. There must be a reasonable willingness by the law enforcement agencies, that is to say the police and courts, to detect, prosecute and punish offenders."

And in relation to the matter of unwillingness he pointed out that inefficiency and incompetence is not the same as unwillingness, that there may be various sound reasons why criminals may not be brought to justice, and that the corruption, sympathy or weakness of some individuals in the system of justice does not mean that the state is unwilling to afford protection. "It will require cogent evidence that the state which is able to afford protection is unwilling to do so, especially in the case of a democracy." The formulation does not claim to be exhaustive or comprehensive, but it seems to me to give helpful guidance."

177. We note also the judgement of the Court of Appeal in Noune v SSHD [2000] EWCA Civ 306 which emphasised that a person could not be disqualified from surrogate protection merely because law enforcement agencies were “doing their best and are not being either generally inefficient or incompetent.” We also apply the judgment of the Auld LJ Court of Appeal in Bagdanavicius v SSHD [2003] EWCA Civ 1605 where he said:

“55. (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.”

178. Mr Jones relied on the fact that Albania had been downgraded from a Tier 1 to Tier 2 Watch List by the US State Department of State’s Trafficking in Persons Report 2008 because of:

“its failures to provide evidence of increasing efforts to combat trafficking in persons over the past year, particularly in the area of victim protection. The government did not appropriately identify trafficking victims during 2007.

179. The Trafficking in Persons Report 2008 had gone on to state:-

“Albania is a source country for women and girls trafficked for the purpose of commercial sexual exploitation and forced labour ... The Government of Albania does not fully comply with the minimum standard for the elimination of trafficking; however it is making significant efforts to do so. The Government of Albania is placed on Tier 2 Watch List for its failure to provide evidence of increasing efforts to combat trafficking in persons over the past year, particularly in the area of victim protection. The government has not appropriately identified trafficking victims during 2007. It also has not demonstrated that it is vigorously investigating or prosecuting complicit officials. ... The Government of Albania did not provide convincing evidence of progress and law enforcement efforts to combat human trafficking during 2007. ... The government discontinued anti-trafficking training for new and continuing police officers, although training for judges and magistrates continued. Between June and July 2007 the government fired approximately 20% of its specialised and highly trained anti-trafficking police officers as part of an overall police reconstructing effort. In three separate cases, the Ministry of Interior arrested twelve police officers accused of trafficking in 2007, including six officers with direct responsibility for anti-trafficking at the borders. Prosecutions of these cases and several others from the last reporting period remain ongoing. ... In 2007, the government identified only thirteen women and seven children as victims of trafficking during the reported period. ... At the same time, however NGO shelters reported 146 victims of trafficking during the reporting year.”

180. There is considerable evidence that there are steps taken by the Albanian authorities to give support to returned victims of trafficking not only by support for the shelters (the Linza shelter is state funded) but also in terms of their own policy for the rehabilitation of the victims of trafficking in the provision of micro loans and procedures to place former victims of trafficking into the job market. Moreover there is evidence that traffickers are being prosecuted. In Dr Schwandner-Sievers report she states:-

“... According to the latest EU progress report (November 2008) ‘reliable witness protection remains weak with the result that victims of trafficking are reluctant to report their traffickers to the police’ Other important sources similarly cite the insufficient witness protection programme as the main risk factor for VOTs seeking state protection.....For example, Amnesty International in its 2008 report (for 2007) juxtaposes reports on actual convictions of traffickers, training of employees at the Department for the Protection of Witnesses at the Ministry of the Interior, and approval of standards for the treatment of victims in April 2007, with the fact that ‘witness protection remains problematic and victims are reluctant to report their traffickers to the police for fear of reprisal’. ...These findings appear consistent with Vatra’s experience of its VoTs being denied witness protection even in cases of having denounced their traffickers.

It was her view that some of the governmental reforms and legislation “have yet to translate into having any impact on the ground” and she went on in her report to state:

“Vera Lesko of the Vatra shelter in Vlora said, independently, ‘we still remain in the same situation ....., even though we have drafted strategies, laws, structures, a witness protection programme, but the number of victims has actually increased. Even though those things have been done well on paper, implementation lacks in practice ... We have very good laws, compliant with the best international standards but, it is the implementation that remains the challenge’.”

181. The central issues therefore focus on whether or not victims of trafficking face a real risk of persecution from their former traffickers because they had escaped or of being re-trafficked and whether or not there is a sufficiency of protection for them with in Albania. The first issue is, as we have stated above, fact specific. When considering the second issue we note that there are, in Albania, laws and initiatives to combat trafficking. It is said that Albania is a country which is the third most corrupt in the world and Freedom House, in 2008, summarised the situation there as stating that corruption pervaded all areas of life in Albania, although there were some efforts in Albania to address the problem. The judiciary have been labelled a “cesspool of corruption” in the European Commission’s Progress Report of 2007 which stated that “efforts against organised crime are seriously hampered by corruption at all levels of law enforcement”. Amnesty International’s report of May 2007 stated:

“The prosecution has noted that the work of the police played little part in the identification of traffickers and in the collection of evidence against traffickers. Prosecutions were almost always started on the basis of a complaint by an alleged victim and relied heavily on their evidence. Police frequently fail victims .....

182. There are Government programmes for the re-integration of the victims of trafficking. There is training for police and judges and officers at the borders. There has been the prosecution of the Durres gang, which was perhaps the largest and most wide reaching of the criminal gangs in Albania which was involved in many criminal activities including trafficking. Although we accept that there is little in the way of witness protection that is effective, there is evidence that there have been prosecutions of police involved in trafficking. We accept that there is considerable corruption in Albania but we conclude that the steps taken by the Albanian authorities are sufficient to meet the standard of a sufficiency of protection from re-trafficking from “new” traffickers as set out in the judgment of Lord Clyde in Horvath from which we have quoted above. However, when considering the issue of whether or not the victim of trafficking has a sufficiency of protection from her former traffickers, should they wish to re-traffic her or harm her we consider that that issue must again be fact specific. We note the clear evidence of the brutality of those who have abducted women and trafficked them to Europe. We consider that the levels of corruption in Albania and societal attitudes towards women,

particularly those that are thought of as “kurva”, are such that it is not possible to reach a clear conclusion that there is in all cases for a victim of trafficking a sufficiency of protection from her former traffickers. We conclude that, for each individual it is necessary to make an assessment taking into account the particular factors of that individual. These would include her age, her social, economic and educational background, the network of support which she might have, whether or not she has an illegitimate child and the way in which she has been trafficked in the past. If the victim is at real risk of persecution from her family or her “husband” then there is little evidence that the State would intervene, particularly in the north of the country.

### Internal relocation

183. We consider that the issue of internal relocation is one which is one which must depend on the particular characteristics of the victim of trafficking. When considering the risk of persecution and the possibilities of internal relocation the educational and social background of the victim of trafficking and the geographical location of their home area are of crucial importance although, in general it appears from the evidence we have heard that the higher the standard of education and social standing of the family of the victim of trafficking the less likely it is that they would have been trafficked in the first place.

184. In respect of the issue of internal relocation we have regard to the judgment of Lord Bingham of Cornhill in SSHD v AH (Sudan) and Others [2007] UKHL 49 where Lord where he stated:

“In paragraph 21 of my opinion in Januzi I summarised the correct approach to the problem of internal relocation in terms with which all my noble and learned friends agreed:

“The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so . . . There is, as Simon Brown LJ aptly observed in Svazas v Secretary of State for the Home Department, [2002] 1 WLR 1891, para 55, a spectrum of cases. The decision-maker must do his best to decide, on such material as is available, where on the spectrum the particular case falls. . . . All must depend on a fair assessment of the relevant facts.”

Although specifically directed to a secondary issue in the case, these observations are plainly of general application. It is not easy to see how the rule could be more simply or clearly expressed. It is, or should be, evident that the enquiry must be directed to the situation of the particular applicant, whose age, gender, experience, health, skills and family ties may all be very relevant. There is no warrant for excluding, or giving priority to, consideration of the applicant’s way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country. I do not underestimate the difficulty of making decisions in some cases. But the difficulty lies in applying the test, not in expressing it. The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling-up of living standards around the world, desirable though of course that is.”

185. We note also the speech of Baroness Hale in the House of Lords in AH

(Sudan) where she stated:

- “20. We are all agreed that the correct approach to the question of internal relocation under the Refugee Convention is that set out so clearly by my noble and learned friend, Lord Bingham of Cornhill, in Januzi and others v Secretary of State for the Home Department [2006] UKHL 5, [2006] 2 AC 426, at para 21:

“The decision-maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so.”

As the UNHCR put it in their very helpful intervention in this case,

‘ . . . the correct approach when considering the reasonableness of IRA [internal relocation alternative] is to assess all the circumstances of the individual’s case holistically and with specific reference to the individual’s personal circumstances (including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities). This assessment is to be made in the context of the conditions in the place of relocation (including basic human rights, security conditions, socio-economic conditions, accommodation, access to health care facilities), in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual could live a relatively normal life without undue hardship.’

I do not understand there to be any difference between this approach and that commended by Lord Bingham in paragraph 5 of his opinion. Very little, apart from the conditions in the country to which the claimant has fled, is ruled out.

21. We are also all agreed that the test for internal relocation under the Refugee Convention is not to be equated either with a “well-founded fear of persecution” under the Convention or with a “real risk of ill-treatment” contrary to article 3 of the European Convention on Human Rights. By definition, if the claimant had a well-founded fear of persecution, not only in the place from which he has fled, but also in the place to which he might be returned, there can be no question of internal relocation. The question presupposes that there is some place within his country of origin to which he could be returned without fear of persecution. It asks whether, in all the circumstances, it would be unduly harsh to expect him to go there. If it is reasonable to expect him to go there, then he can no longer claim to be outside his country of origin because of his well-founded fear of persecution. Mercifully, the test accepts that if it is not reasonable to expect him to go there, then his continued absence from his country of origin remains due to his well-founded fear of persecution.”

186. We consider that that test, with its emphasis on the particular characteristics of the individual is particularly apposite when considering the position of victims of trafficking who might face internal relocation at a time when they would be suffering the trauma about which Dr Agnew-Davis spoke in her report and at the hearing. We emphasise the terms of the intervention of UNHCR quoted by Baroness Hale in her paragraph 20 above. Moreover we would emphasise that, as stated above, Albania is a country with a relatively small population. Dr Schwandner-Sievers refers to common socio-cultural conduct in which every person was socially positioned. We note the comment that the Director of the Anti-Government Unit, Ms Irena Targa, made to Dr Schwandner-Sievers

that:

“Family relations are that strong in Albania, you have to live here to understand this is no fairy tale, how important family links are. A brother might even have trafficked his sister or killed her because she was trafficked, but the relationship is very strong. This is such a small country; it is not possible to live somewhere without being known. The family is so close. For us it is easier to identify everyone immediately. As soon as someone says their surname we know – the police scan the population. Once the name is mentioned, it depends on the family, but they come here from anywhere they can”.

187. We consider therefore that Albania is a country where there is a real fear that traffickers might well be able to trace those who have escaped from them or indeed those whom they fear might expose them. Whether such persons would be motivated to do so is, of course, another matter, as we have discussed above. It is therefore a country where, at least, internal relocation is problematical for the victim of trafficking. To that should be added the difficulties for a single woman to reintegrate into a society where the family is the principal unit for welfare and mutual support as well as, it appears, the channel through which employment is most often obtained. We have therefore concluded that internal relocation is unlikely to be effective for most victims of trafficking who have a well founded fear of persecution in their home area, although once again we consider that it is important to consider each case on an individual basis.

#### Risk of Suicide

188. Of relevance in these cases, and we consider it to be of relevance in many cases of trafficked women, is their psychological state and possible suicidal ideation. We note the guidelines set out in the judgment of the Court of Appeal in J v Home Secretary [2005] EWCA Civ 629. In his judgment Dyson LJ stated, in relation to the possibility that forced return might bring about suicide:

“25. It should be stated at the outset that the phrase "real risk" imposes a more stringent test than merely that the risk must be more than "not fanciful". The cases show that it is possible to amplify the test at least to the following extent.

26. First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must "necessarily be serious" such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see Ullah paras [38-39].

27. Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in Soering at para [91], the court said:

"In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the exposure of an individual to proscribed ill-treatment."(emphasis added).

See also para [108] of Vilvarajah where the court said that the examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka..."

28. Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of D and para [40] of Bensaid.

29. Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] of Bensaid).

30. Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.

31. Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights."

189. In his judgment in the case of Y (Sri Lanka) v SSHD and Z (Sri Lanka) v SSHD [2009] EWCA Civ 362 Sedley LJ stated:

14. It is necessary, before considering how DIJ Woodcraft dealt with this issue, to situate it in the context set by this court in J. The fifth principle, it will be recalled, is that:

...in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.

If a fear of ill-treatment on return is well-founded, this will ordinarily mean that refoulement (if it is a refugee convention case) or return (if it is a human rights case) cannot take place in any event. In such cases the question whether return will precipitate suicide is academic. But the principle leaves an unfilled space for cases like the present one where fear of ill-treatment on return, albeit held to be objectively without foundation, is subjectively not only real but overwhelming.

15. There is no necessary tension between the two things. The corollary of the final sentence of §30 of J is that in the absence of an objective foundation for the fear some independent basis for it must be established if weight is to be given to it. Such an independent basis may lie in trauma inflicted in the past on the appellant in (or, as here, by) the receiving state: someone who has been tortured and raped by his or her captors may be terrified of returning to the place where it happened, especially if the same authorities are in charge, notwithstanding that the objective risk of recurrence has gone.

16. One can accordingly add to the fifth principle in J that what may nevertheless be of equal importance is whether any genuine fear which the appellant may establish, albeit without an objective foundation, is such as to create a risk of suicide if there is an enforced return."

190. In paragraph 36 of his judgment Sedley LJ commented further:

“Although a series of cases, of which J is the best known, have acknowledged that returning someone to a situation which is likely to drive them to suicide is a breach of art. 3, the mode of reasoning in the present case (which is far from unique) is such that no art. 3 “foreign” claim based on a risk of suicide is likely ever to succeed. Indeed Hughes LJ in AJ (Liberia) v Home Secretary [2006] EWCA Civ 1736 remarked on the fact that, so far as the reported cases went, none ever had. The reasoning is that, since Y had made no attempt at suicide despite more than one refusal of his asylum claim, and since Z’s attempt at suicide had not been seriously life-threatening, and since both would ex hypothesi find on return that their fears, even if genuine, are now groundless, there is no real risk that return will impel either appellant to commit suicide. The effect is that, apart from an asylum-seeker who actually commits suicide, only one who comes close enough to succeeding to manifest a serious intent is going to be regarded as presenting a serious risk of suicide on return. Yet the medical logic is exactly the reverse: it is that individuals who are at serious risk of suicide if returned can be stabilised, using therapy and medication, and kept from self-harm so long as they feel safe here. For such individuals the recent past may be no guide at all to the immediate future.”

In that case therefore he found that both of those cases fell into the category set out in paragraph 16 of his judgment. We have applied these principles in our consideration of this part of each appellant’s claim.

#### Current case law

191. Mr Blundell relied on the only country guidance case relating to trafficked women from Albania – VD (Trafficking) Albania CG [2004] UKAIT 00115.
192. The appellant in that case was a member of a family who was involved in a blood feud in Albania. She had been kidnapped by two people, raped because she had turned down a proposal of marriage to an older man who had been introduced to her by them, her kidnappers having said she had lost them a lot of money. She then escaped and came to Britain. Although she had been kidnapped she had not been trafficked but she did claim a risk of trafficking on return. The Tribunal, in a short determination, accepted that Albania was a source and a transit country for the trafficking of women and considered evidence which had indicated that in 2001 official sources had indicated that 100,000 Albanian women and girls had been trafficked to Western Europe and other Balkan countries over the previous ten years. That figure had been revised by Vera Lesko in a report the following year which referred to a number of 6,000 women being trafficked. It also considered figures from UNICEF, UNOHCHR/OSCE/OGIHR and stated that the indication was that therefore less than 600 victims had been trafficked each year. They placed that in the context of the overall population of Albania (at that stage an estimated 3.09 million). They noted that there was evidence that trafficked women fell into the 14 to 17 age group and referred to the various ways by which those women and indeed young girls were obtained. It was their view that it was not reasonably likely, having considered those statistics, that any particular individual was at real risk of being trafficked. They accepted that there was corruption within Albania but considered that there was, for that appellant, who would be pursued by the group that abducted her (it appears

because they considered that as the group had not “bought” that appellant in the first place there was no reason to suppose that she would come across them or their associates again even if she returned to her home area. We noted the appellant was nearly 28 years old when she had been abducted and it was not considered that she would be likely to be abducted again. The Tribunal in VD concluded there is nothing in the objective evidence to suggest that lone females were at greater risk of abduction. Because they considered that that appellant would not be at risk in her home area they did not consider the issue of internal flight.

193. We have had before us a much larger range of evidence and materials relating to the issue of trafficking and conclude that a consideration of the cases of victims of trafficking require consideration of a far wider number of factors when assessing the cases of victims of trafficking and it is only after applying those factors on a case by case basis that it is possible to assess whether or not there would be a real risk of the victim of trafficking facing persecution on return.

#### Article 8 rights

194. It is claimed by both appellants in these appeals that their removal would be an infringement of their rights under Article 8 of the ECHR. In considering those rights we note that the correct approach to applying Art 8 was articulated by Lord Bingham of Cornhill in R (Razgar) v SSHD [2004] UKHL 27 at [17] in the now well-known 5-stage test:

“(1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?

(2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?

(3) If so, is such interference in accordance with the law?

(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?”

195. We now consider the particular circumstances of the appellants in the instant appeals.

#### Appeal of AM

196. We have set out above the facts in this case as found by the Immigration Judge. We accept that AM’s father introduced her to a man, A, to whom she believed she was being betrothed, that he took her to Pristina where he and a colleague repeatedly raped her and she was forced to work as a prostitute. Eventually she became pregnant and was then brought to Britain, it having been made clear that she was to work as a prostitute here and that her child

would be sold. She then escaped. We note that Mr Blundell argued that a finding by the Immigration Judge that she could return to her family should be preserved. We do not accept that assertion as we do not consider that that was a clear finding by the Immigration Judge, let alone a primary finding or that it was a finding which was preserved. In any event we would add that we have before us considerable background evidence in the context of which that issue should be reconsidered. Mr. Blundell referred to the judgment of the Court of Appeal in DK (Serbia) and others v SSHD [2006] EWCA Civ 1747 which referred to a decision being reopened in “exceptional circumstances” and we consider that the circumstances in this case are such that that would be appropriate in any event.

197. We also have before us the evidence of Dr Agnew-Davies which indicates that this appellant would have been unlikely to have been able to have given clear instructions with regard to the attitude of her father at the time she was interviewed by her solicitors, when she gave a statement in which she said she would be able to return to her family home. When she gave her evidence before us she said that she did not believe that her family would accept her child, that if she were to return home she would be kept indoors because of the shame of what she had done and she would be married, as quickly as possible, against her will, to someone who would be not her choice of husband but would be likely to be a man with a disability who could not find any other wife.
198. We find that there is a real risk that if she returned to her family they would separate her from her child. Dr. Schwandner-Sievers evidence in relations to the mores of families in rural areas and their concept of “honour” fortify us in that conclusion. That in itself would, we consider, amount to persecution for a reason recognised by the Convention because not only was she a member of a particular social group – a woman who had been trafficked – but also she is a member of the more closely defined group, a victim of trafficking who fell within the category of “kurva” and who had a child. We consider that it is not reasonably likely that her father, whom she has always described as a man who was brutal towards her mother, would tolerate her daughter’s presence.
199. Moreover AM made it clear in her statement that she feared the return of A, the man to whom she believed she was betrothed, and his accomplice, N. Mr Blundell’s argument was that nothing had been heard further from them, they had not lost any money on her and therefore there was no reason why she should be of interest to them. However, the reality is that they knew her father and knew where she lived. We accept that given A’s connections with her family and her father’s workplace he would be likely to find out that she had returned. He would have a clear incentive to ensure that AM did not expose the fact that he was a trafficker and we find that given his brutality and ruthlessness in the past, there is a real risk that AM would be likely to be at risk from him. He would also be able to claim that she was his “wife” and therefore that he had a proprietary interest in her. We consider that there is a real risk that he would wish to re-traffic her and separate her from her child. He would treat her with brutality as he had in the past and that treatment was such as to amount to persecution. The treatment she would receive from him

would amount to persecution for a Convention reason: that she was a member of a particular social group. Finally, we consider that there is a real risk that he might put forward the claim that he was entitled to take AM's daughter who was, after all, conceived when AM had been put into his care by her father. We consider the terms of Paragraph 339K of the Immigration Rules are relevant here because the situation of AM on return is not a situation where there are good reasons too consider that the persecution would not be repeated. Given that the Kanun of Leke Dukagjinit is still a powerful force in Northern Albania, we do not consider that in that remote part of the country the police would interfere in any action that her father or her "husband" would take. She does not have a sufficiency of protection in her home area.

200. We have therefore concluded that AM would face persecution in her home area. We then consider whether or not internal relocation is open to her. We do not consider that it is. We note the terms of the Opinion of Baroness Hale in AH (Sudan), in the House of Lords, emphasising that the particular characteristics of the individual are of relevance when considering internal relocation. We are satisfied that AM is a particularly vulnerable individual. She would not have any support in Tirana. We consider, having taken into account the report of Dr Agnew-Davies, that she would be unable to cope in a shelter and would not be able to access the support mechanisms, such as they are in Tirana. We find that she might well become the prey of traffickers, if not A and N, then other traffickers who we accept prowl around the shelters. Such traffickers would have no compunction in separating her from her child. She is a particularly vulnerable individual and we do not see that she would be able to cope with a young child and find work and given societal norms would be further disadvantaged because she would be looked upon as "kurva" and this would reinforce her own belief that she was unclean. We consider therefore that it would not be reasonable and indeed would be unduly harsh for her to be expected to re-establish herself elsewhere in Albania.
201. We therefore consider that AM would be likely to suffer persecution on return to Albania and, for the same reasons would also suffer treatment contrary to her rights under Article 3 of ECHR. With regard to her rights under Article 3, we also believe that they would be infringed because of her suicidal ideation. Applying the test as relevant test as set out by Sedley LJ in J we consider that removal would be an infringement of her rights under Article 3 of the ECHR for that reason alone. We consider that there is a real risk that she would commit suicide on removal if she was served with removal directions as we consider, particularly having listened to her final statement, that it has been established that there is a real risk that she would commit suicide rather than have her daughter returned to Albania. We do not accept that safeguards could be put in place to ensure that she would not do so.
202. In considering whether or not the rights of this appellant under Article 8 of the ECHR would be infringed we apply the relevant 5 stage test set out in paragraph 187 above. We consider that her removal would be an infringement of her private and family life here. We note the elements of

private life here – her work and training and her friendships – but also the fact that she is living with her child here. We consider that there is a real risk that on return to Albania she would be separated from her child. That is a clear infringement of her rights under Article 8: we follow the judgment of the Court of Appeal in EM (Lebanon) v SSHD [2006] EWCA Civ 1531 in this regard. While the removal of the appellant would be in accordance with the law in that she has no right to remain here (apart from her right to claim international protection) it would clearly not be proportionate given the factors which we have set out above. We would add that her mental health would also be a factor which would mean that her removal would not be proportionate.

203. For these reasons we find that her Article 8 rights would also be infringed by her removal. We therefore consider that her appeal should be allowed on both asylum and human rights grounds, under Articles 3 and 8 of the ECHR.

### **Appeal of BM**

204. The accepted facts in this case are that BM was abducted from her home when her father was shot. At the time she was a minor, aged 16. She was raped, brutally treated and forced to work in a brothel in Albania before being transported to Italy.

205. We do not consider that she will be able to return safely to live in her home area. She has no male protection there now and would be rejected by society in her village. The fact that she too has a young illegitimate child would mean that she would be severely stigmatised. Moreover, she was abducted by men who had been reported to the police for the murder of her father. They could simply not risk her return because of her ability, possibly, to identify them. Given that they went to her village in the first place we consider it is likely that they would still have contacts within the local area which would mean they would be aware that the appellant had returned and we consider there is a real risk that they would then take steps to kill or re-traffic her. As a young woman on her own with a child in rural northern Albania we do not consider that there would be a sufficiency of protection for her in her home area.

206. We have considered whether or not she would be able to relocate internally and whether it would be reasonable to expect her to do so. We find that it would not. We consider that it is reasonably likely that the criminal gang who were willing to kill her father when she was kidnapped may well find out where she was and would again take steps to kill her or take her out of the country. Even if that were not the case we conclude that, given her psychological state, she would not be able to survive without more than the support she might receive in a Shelter. Given her psychological state we consider that she would be unable to avail herself of the various programmes for the rehabilitation of former victims of trafficking. She also has suicidal ideation, which, placing weight on the report of Dr Agnew-Davis we consider might well be realised if she were forced to return. Again we place weight on the judgment of Sedley LJ in Y (Sri Lanka).

207. We therefore conclude that she does have a well-founded fear of persecution

on return to Albania and for the same reason we consider that she would face treatment contrary to her rights under Article 3 of ECHR on return. We also consider that the risk of suicide in her case is made out to the required standard.

208. In considering the article 8 rights of this appellant we again apply the relevant structured approach which we have set out in paragraph 187 above. We find that BM is exercising both private and family life, with her daughter, here. Her removal would be an infringement of that private and family life as we consider that it could well lead to a situation where she would be separated from her child. While we consider that (apart from the fact that the appellant is entitled to asylum here) her removal would be lawful but we do not consider that it would be proportionate, given the strength of her ties with this country and the fact that we conclude that her mental state is such that she would not be able to access the support mechanisms available in Tirana.

## **Conclusions**

209. The evidence in these appeals reflects not only the perspective of the writers of the reports we have studied in their attitudes to prostitution, polarised in the dichotomy between the attitudes that the prostitute is always the victim and that “work is work”. The evidence also reflects the changing nature of Albanian society and the changing attitude of the Albanian Government to the problem of trafficking. Since 1990 there have been changes in rigid societal attitudes to women, particularly in the towns, and a movement of people from the countryside to the towns. This has led to changes in the profile of those who are trafficked and also what they might face on return. The Albanian authorities are taking steps to prevent trafficking and to rehabilitate those who return after being trafficked. How successful either attempt is a matter of considerable debate.

210. These appeals are appeals of women who have been trafficked from Albania for the purpose of prostitution. In this determination we have considered the position of such women. We would emphasise that while Albania is a source country for women who are trafficked for prostitution that does not mean that there is a real risk of being trafficked for Albanian women in general or even for those without family protection.

211. Albania is a significant source of women who are trafficked for prostitution in Europe. Traditional, rigid social mores are still relevant when considering the situation which trafficked women would face if returned, but Albanian society is changing and this affects both the way in which trafficked women are treated on return and also in the profile of the women who are trafficked. The age of those likely to be trafficked appears to have gone up from between 14 and 20 to those in their late teens. However, it is not unusual for trafficked women to be older particularly where they have themselves approached the trafficker. While it was considered in the past that women from the countryside and particularly Roma were most vulnerable to being trafficked that profile has changed and it is now not possible to profile victims of trafficking who may come from both the towns and the country and can include students or

those with some education.

212. Whereas, in the past, the most common way in which women entered into trafficking was by abduction or a false promise of marriage or by advertisements offering to arrange work abroad, there now appears to be a much higher proportion of trafficked women who have approached the traffickers themselves, having made a decision that working as a prostitute in Europe is preferable to the life that they might lead in Albania or as a means of rehabilitating themselves if they are considered to be “kurva”, typically after a long term informal relationship has ended and the male partner has departed. The fact that this source of women exists means that it is less likely that traffickers would have to take the serious criminal step of abducting their victims, although women may still be deceived into being trafficked. While this may still take place in rural areas, increasing knowledge of the dangers of accepting offers of work, for example, as a waitress, abroad means that women are less likely to be trapped in that way. Where a woman enters into a contractual relationship with the trafficker that relationship cannot properly be considered to be one of trafficking unless it can be shown that the trafficker is in a position of control over the woman, although the reality appears to be that even such contractual arrangements are likely to involve intimidation and violence as a means of control.
213. Traditional Albanian society, particularly in the north, is influenced by the strict code of “honour” embodied in the “Kanun of Leke Dukagjinit” which sets out how a woman should behave and the inferior role of women in society. At its worst, and very rarely, it can lead to honour killings of women who are thought to have damaged a family’s honour by having stepped outside rigid standards of behaviour. Such women are referred to as “kurva” and may face discrimination. Families may well consider that having an illegitimate child brings particular dishonour on a family and for that reason are likely to refuse to have the trafficked woman returned to them, or if they accept her back, would refuse to take the child. Albania has a large number of children who have been abandoned. Victims of trafficking may well be considered by their families and by society to be a very poor marriage prospect and they could face being forced into a marriage with someone whom they would not choose themselves.
214. Each case will turn on its own particular facts or circumstances. The treatment which such women might receive from their families could in certain circumstances amount to persecution. They may also be at risk from their former traffickers, particularly if the trafficker considers that he has some right over them if he has entered into a financial arrangement with their family or alternatively if they consider that the trafficked woman would be able to give the police evidence of crimes which they have committed. In other cases there may be nothing to indicate that either the trafficker or the victim of trafficking’s family would be likely to harm her.
215. If a victim of trafficking seeks internal relocation the Albanian State and NGOs provide shelters and other forms of assistance which means that the victims of trafficking will not be destitute. Although Albania is a traditional society where

family connections are important in obtaining work it cannot be said that a woman on her own would necessarily be forced to live in such difficult circumstances as to amount to article 3 ill treatment.

216. While, in general the Albanian State can be thought to provide protection to the “Horvath” standard, corruption and the deference to family and to “husbands” means that, in some cases, sufficiency of protection will not exist. Each case must be considered on its own facts.
217. If a victim of trafficking is unable to return to her home area either because she might be at danger from her family or from the trafficker then internal relocation may be available. However, when considering internal relocation it is important to have regard to the individual circumstances of the victim of trafficking and the nature of the trafficking process. A woman who has been abducted may well be in danger from the former trafficker and the issue of sufficiency of protection must be assessed in each case.
218. Where a victim of trafficking has been abducted, the act of being trafficked, the initial “breaking in” period and the brutality and imprisonment which are likely to follow while the woman is forced to act as a prostitute are events likely to have such a profound psychological affect as to rise to a risk that the individual will suffer from PTSD from which it may take many years for her to recover. That will, in turn, make it difficult for her to function normally on return or to reintegrate into Albanian society. The fact that a victim of trafficking has suffered such trauma must be taken into account when assessing her ability to relocate internally, and will also be an important issue when considering any potential infringement of her Article 8 rights. If she has a child, who might not be accepted by her family, the rights of that child must also be taken into consideration. When considering the issue of relocation and the use of the shelters it should be accepted that the shelters cannot guarantee security and there is a risk of re-trafficking. Where there is evidence of suicidal ideation this should be carefully considered within the context of the victim of trafficking’s Article 3 rights.
219. Victims of trafficking in Albania are members of a particular social group. We note the conclusions of the Tribunal in VG and consider that there is little distinction between trafficked women in Moldova and those in Albania. But that does not mean of course that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether a particular appellant will face a real risk of persecution on account of her membership of such a group.
220. Finally, we would comment that the Council of Europe Convention against Trafficking in Human Beings of 1 April 2004 was ratified by Britain on 17 December 2008 and came into force in Britain on 1 April 2009. Articles 12, 13 and 14 state:

**Article 12 – Assistance to victims**

1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
  - a standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
  - b access to emergency medical treatment;
  - c translation and interpretation services, when appropriate;
  - d counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
  - e assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
  - f access to education for children.
- 2 Each Party shall take due account of the victim's safety and protection needs.
- 3 In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.
- 4 Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.
- 5 Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
- 6 Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.
- 7 For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

### **Article 13 – Recovery and reflection period**

- 1 Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.

- 2 During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.
- 3 The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

#### **Article 14 – Residence permit**

- 1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
  - a the competent authority considers that their stay is necessary owing to their personal situation;
  - b the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
- 2 The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.
- 3 The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
- 4 If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.
- 5 Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

221. It was not argued before us that these appellants should have been entitled to leave under the provisions of the Convention on Trafficking in Human Beings and we have therefore not considered that issue in this determination.

#### **Decision**

222. In each of these appeals the Tribunal has found that the making of the previous decision involved the making of an error on a point of law. We set aside the previous decisions.

223. For the reasons set out above our decisions are that each of these appeals is allowed on asylum and human rights grounds.

Signed

Senior Immigration Judge McGeachy  
Judge of the Upper Tribunal

Appendix: List of Documentation considered

“My name is not Natasha”: How Albanian women in France use trafficking to overcome social exclusion (1998-2001)	May 2009
Albanian Ministry of interior: national strategy on Combating trafficking in persons	2008-2010
Amnesty International Report: Albania	2008
Commission of the European Communities Commission Staff working document, Albania, 2008 Progress Report	2008
US Aid: The Albanian initiative co-ordinated action against human trafficking	2008
International Organisation for Migration United Nations in Albania	29 September 2008
Anti-slavery – Vera Lesko and the hearth	5 September 2008
US Department of Labour Bureau of International Labour Affairs, Albania.	5 September 2008
Anti-slavery trafficking Albania	5 September 2008
Central Intelligence Agency: The World Fact Book - Albania	21 August 2008
BBC Country Profile Albania	3 July 2008
United States Department of State: Trafficking in Persons Report	June 2008
United States Department of State: Country Report on Human Rights Practices 2007	11 March 2008
Foreign and Commonwealth Office UK: Country Profile, Albania	28 February 2008
Republic of Albania Evaluation report on the implementation of the national Strategy against Trafficking in Human Beings	2005-2007
Open Society Institution: Violence Against Women: Does the Government Care in Albania	2007
Different and Equal Annual Report	2007
Vatra Annual Report	2007
Amnesty International: “No Place to Call Home”	2007
Violence against Women: Does the government care in Albania	2007
Amnesty International: Albania, Respecting the Rights of Orphans to Housing	21 November 2007
Foreign and Commonwealth Office: Human Rights Annual Report	2007
UNHCR Report by the Commissioner of Human Rights on his visit to Albania	27 October 2007 - 2 November 2007
Immigration and Refugee Board of Canada response to Information Requests – Procedures for registering complaints against the police	5 October 2007

Immigration and Refugee Board of Canada National Response to Information Requests – identity documents required to obtain social services	1 October 2007
Immigration and Refugee Board of Canada National Documentation Pack: Albania	18 July 2007
USAID Albania: Shelter Helps Young Women Rebuild Lives	5 February 2007
Human Rights Watch: Albania	2006
“Different and Equal” a study of the reintegration process of former Albanian victims of human trafficking	2006
US Department of State Albania Country Reports on Human Practices	2006
Women’s Organisations, Albania	19 June 2006
Amnesty International Albania: Violence against Women in the family	30 March 2006
Amnesty International: Albania: Violence against Women and the Family “it is not her shame”	March 2006
Amnesty International Obligations: under the UN Convention against Torture	1 February 2005
Human Smuggling and Trafficking Centre Fact Sheet Distinction between human smuggling and human trafficking	January 2005
Asylum Aid Report: “Safe for Whom?”, extracts on Albania	30 June 2004
International Labour Organisation, employment policy review Albania	2004
New York Times: “For Albanians, it has come to this: a son for a TV”	13 November 2003