Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Refugee Status, Membership of a 'Particular Social Group' and Victims of Trafficking for Sexual Exploitation in Albania

Question(s) at stake:

Whether the appellants, as women victims of trafficking in Albania, are members of a 'particular social group' under the Refugee Convention, and whether internal relocation is possible for them.

Outcome of the ruling:

The Upper Tribunal held that victims of trafficking from Albania may be members of a "Particular Social Group" under the Refugee Convention. However, whether they face a real risk of persecution or treatment contrary to their rights under Article 3 of the European Convention of Human Rights (ECHR) as a result, and whether they would be unable to access State protection, depends on the particular circumstances of each case.

A strict code of honour governs a significant proportion of Albanian population such that trafficked women are likely to experience significant challenges both reintegrating into their communities on return and relocating internally. The societal discrimination female victims of trafficking are likely to face on return to Albania does not reach a persecutory level. By contrast, the treatment trafficked victim may receive from their own families could amount to persecution. Examples include being honour killings, forced marriage and forced separation from their children.

In the light of the Country Guidance, both appeals were allowed.

Topic(s):

- Immigration and Asylum

Keywords:

- Grounds/Reasons of persecution
- Membership of a particular social group
- Real Risk of persecution
- Refugee status
- Right to asylum
- Trafficking

Tag(s):

- Customary law

Author(s):

- Mirzac, Iulia (Birmingham Law School, University of Birmingham)

Country:

United Kingdom

Official citation:

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

Link to the decision:

https://tribunalsdecisions.service.gov.uk/utiac/37676

ECLI:

No ECLI number / ECLI number unknown

Date:

18 February 2010

Jurisdiction / Court / Chamber:

Upper Tribunal (Immigration and Asylum Chamber)

Remedy / Procedural stage:

Appeal from the First-tier Tribunal (Immigration and Asylum)

Previous stages:

The appellants' applications for asylum were rejected and removal directions were served for their return to Albania. Their appeals to the First-tier Tribunal were dismissed. Upon reconsideration by the Home Office, both determinations were found to contain material errors of law. Hence, the Upper Tribunal heard the appeals as second stage reconsiderations with a view to give Country Guidance regarding the conditions Albanian trafficked victims would face on return to their home county and the risk of future persecution. faced by victims of trafficking on return to Albania and the likelihood of future persecution.
No official citations of the previous stages are available.

Subsequent stages:

- No information found.

Branches / Areas of law:

International law; Administrative law; Asylum law.

Facts:

The appellants were two young Albanian women who were forced into prostitution and claimed asylum in the UK upon escape. Both had a young child and claimed asylum on the grounds that their removal would infringe their rights under the Refugee Convention, as implemented through the UK "Protection Regulations" and the Immigration Rules, as well as under Article 3 and Article 8 of the ECHR.

AM was born in a village near Kukes in the north of Albania on 16 August 1983. She went through an arranged marriage with A who, together with N, trafficked her and forced her into prostitution. She fell pregnant and was subjected to physical violence at the hands of N and A when they found out about the pregnancy. She was then smuggled into the UK by A and N with the intention to sell her baby and force AM into prostitution. She claimed asylum upon escape from her captors.

In her asylum application, AM claimed that she could not return safely to Albania as her traffickers would look for her. Albanian traffickers have connections across the country and the police would not protect her. AM also claimed that she would be ostracized by her community and by her family. AM claimed the latter was likely to take her child away from her to preserve the family honour in accordance with Albanian customary law. At the administrative stage, the immigration judge concluded that AM had been trafficked into the UK. The judge followed the leading case of *VD (Trafficking) Albania* [2004] holding that not all Albanian women were at risk of re-trafficking but that the risk of re-trafficking increases if a girl has been sold by her parents to the traffickers and the traffickers have shown an interest in the girl's whereabouts after her escape. The judge reasoned that there is sufficient protection in Albania given the recent changes in the law and the nationwide efforts to tackle the problem of trafficking. Hence, the immigration judge concluded that, on return to Albania, AM would not face a real risk persecution or treatment contrary to her rights under Article 3 of the ECHR.

On reconsideration by the Home Office, AM argued that the immigration judge did not distinguish the material facts of the *VD* case from her case as someone trafficked by her fiancé/husband, and that this constituted an error of law. In Northern Albania, where AM was from, the *Kanun* Code set out that a fiancé has rights over her equivalent to that of a husband over his wife. The traffickers knew about her family home and had already used coercion on the other family members. She had special integration needs given that she had a baby. In addition, the immigration judge erred in not making a proper finding that she fell under the "Particular Social Group" category of the refugee definition.

The second appellant, BM, was born on 6 December 1986 in VauDejes, in North Eastern Albania. She was abducted by a gang of masked human traffickers who shot dead her father while abducting her. She was taken to Italy, raped, and forced into prostitution. She was a minor at the time, aged 16. She escaped her traffickers, hid in the back of a lorry, and entered the UK illegally in September 2003. She claimed asylum shortly thereafter. Her asylum claim was refused. However, given her age, BM was granted discretionary leave until November

2004.

The basis of BM's appeal against the refusal of refugee status is that if she was returned to Albania, she would be re-trafficked because her traffickers knew her family's whereabouts. She had no brothers and her father was dead. The Albanian trafficking gangs were influential throughout the country and the police were corrupt and unable to offer adequate protection. She could not safely relocate anywhere in Albania. In addition, she had a child from an earlier relationship in the UK. BM anticipated that she and her daughter would face rejection, stigmatisation and abuse in her community. The immigration judge dismissed the appeal stating she could be safely returned to Albania as internal relocation was available. On reconsideration by the Home Office, BM argued that the immigration judge had erred in applying the VD case, thereby treating as settled the question of whether trafficked victims face a greater risk of re-trafficking. Instead, she argued, this question needed further investigation.

In summary, both accounts were found credible as to part, or the entirety, of their claims. However, neither of the appellants was found to be at real risk of persecution if returned to Albania as they could safely be relocated. As a result, the grounds of appeal were accepted and the case was remitted to the Upper Tribunal.

Ruling:

The First-tier Tribunal decisions regarding AM and BM were found to contain errors of law and were quashed. After hearing extensive evidence from country experts, medical doctors, and social services, as well as considerable background evidence, the Upper Tribunal remade the decisions in the appeals and allowed them on refugee grounds.

The Upper Tribunal's ruling can be divided into two main parts, one addressing Country Guidance and the other addressing the individual claims at stake.

Country Guidance

The most important conclusions are the following:

1. This Country Guidance does not replace the previous guidance in *VD (Trafficking) Albania CG* [2004] because the two cases present material points of distinction between the facts. (para. 9)

2. Albanian women and girls are trafficked through a wide range of methods ranging from deceitful employment offers and false promises of marriages to abductions. To escape an abusive (or traditional) family and social stigmatization by finding a husband abroad and/or for economic reasons, Albanian women are increasingly choosing a “50/50 basis” arrangement in which they are complicit in the trafficking. (para. 137)

3. Women and girls from the Northern part of Albania and those of Roma descend are particularly vulnerable to trafficking, largely due to prevailing male dominance, domestic violence, as well as traditional gender-based roles and attitudes among communities. These translate into arranged marriages as well as girls being separated from unrelated males and kept from attending secondary school. Increasingly, trafficked women originate from towns rather than the countryside. This reflects a change in Albanian society, such as the depopulation of the countryside, and in the trafficker’s recruitment strategies. (paras. 138–139)

4. There is evidence of some victims being re-trafficked. (para. 145)

5. The psychological make-up of trafficking victims, alongside other personal characteristics such as strength, age, and gender, is relevant to the question of whether there is a real risk of re-trafficking and whether internal relocation would not be unreasonable or unduly harsh on the victim. (para. 150)

6. In the traditional parts of Albania, victims of trafficking returning to their family homes are likely to be rejected or kept hidden away and disposed of through marriage as soon as possible due to the suffering, shame, and dishonour they would bring to the family. (para. 152)

7. Victims of trafficking, especially as single mothers to young children, would find it significantly more difficult to re-integrate into Albanian society than would be the case in many other countries. Illegitimate children are likely to be rejected by families as they would be a visible reminder of the shame and dishonour brought

by their daughter or sister onto the family. (para. 154)

8. Victims of trafficking, upon their return to Albania, are capable of forming a "Particular Social Group" (as per *SB (PSG – Protection regulation – Regulation 6) Moldova CG [2008] UKAIT 00002*). (para. 160)

9. Whether they face a real risk of persecution or treatment contrary to their rights under Article 3 of the European Convention of Human Rights (ECHR) as a result, and whether they would be unable to access State protection, depends on the particular circumstances of each case. Relevant factors include but are not limited to:

- "the social status and economic standing of the appellant's family;
- the level of education of the appellant and her family;
- the appellant's state of health, particularly her mental health;
- the presence of an illegitimate child;
- the area of origin of the appellant's family;
- the appellant's age". (para. 158)

10. Trafficked victims originating from rural areas, particularly from northern parts of Albania, where families tend to adhere to the *Kanun of Leke Dukagjinit* and the code of "honour" therein, they are likely to be forced into marriage, which can amount to persecution or treatment contrary to their rights under Article 3 of the ECHR. Additionally, where the trafficked victim has a child who is removed from her on account of the above-mentioned code of "honour". Such treatment would be persecutory in nature and breach their rights under Article 8 of the ECHR. (para. 171)

11. The Albanian authorities take steps that meet the standard of sufficiency of protection from re-trafficking from "new" traffickers. However, whether there is sufficient protection from former traffickers of victims is a fact-specific issue. When assessing the latter individual characteristics should be taken into account, including the victim's "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", the State is unlikely to intervene, especially in the northern parts of Albania. (para. 182)

12. The issue of internal relocation is also dependent on the particular characteristics of the trafficking victim, particularly her educational level, social background and the geographical area of her home community. (para. 183)

13. Given the traditional socio-cultural norms in certain parts of Albania, most trafficked victims with a well-founded fear of persecution in their home area are unlikely to be able to safely relocate within Albania. (para. 187)

Determination of the two appeals

Regarding AM, the Upper Tribunal found that the appellant was a member of a "Particular Social Group" as (1) a woman who had been trafficked and (2) a victim of trafficking who fell within the category of "kurva" and had a child. On account of such membership, the Upper Tribunal found that AM would face persecution on return to Albania for the following reasons:

(i) There was a real risk that, upon return to her family, AM would be separated from her child and would be forced to marry someone against her will. This would be in line with the concept of "honour" prevalent among families in rural areas. (paras. 197–198)

(ii) There was a real risk that AM would be found by her traffickers, especially A, who knew where her family lived, was able to claim a proprietorial interest in AM as his "wife" and had an incentive to ensure AM did not expose him as a trafficker. Thus, there was a real risk that A would wish to re-traffick AM and separate her from her child. (para. 199)

(iii) Sufficient police protection was not available in her home area. (para. 199)

(iv) Internal relocation would be unduly harsh on AM, whose psychological state and suicidal ideation makes her a particularly vulnerable individual. AM also has

special reintegration needs given that she has a young child. The societal norms in Albania would further disadvantage her employment prospects and her ability to reintegrate into society. (para. 200)

(v) There was a real risk that AM would commit suicide should she be served with removal directions to Albania. (para. 201)

Concerning BM, the Upper Tribunal concluded that she had a well-founded fear of persecution on return to Albania for the following reasons:

(i) There was a real risk of being re-trafficked or killed by her traffickers, given their connections in her village and given their murder of her father upon her abduction. (para. 205)

(ii) BM would be rejected and severely stigmatised by society in her village because of her trafficking experience and because she had an illegitimate child. (para. 205)

(iii) The available protection in her home area was insufficient. (para. 205)

(iv) Given BM's young child, her psychological state and suicidal ideation, internal relocation would be unduly harsh. (para. 206)

Both AM's and BM's appeals were allowed on asylum and human rights grounds. The Upper Tribunal concluded that on return to Albania, both appellants had a well-founded fear of persecution and internal relocation was not possible. They would face "a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules" (para. 128). Their removal would also be an infringement on the appellants' rights under Articles 3 (given their psychological state) and 8 (both appellants had established their life with the children in the UK) of the ECHR. (paras. 201–203, 206–208)

Main quotations on cultural or religious diversity:

- "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." (para. 27)

- "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'." (para. 59)
- "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." (para. 65)

- “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.” (para. 138)
- “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. 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.” (para. 140)
- “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.” (para. 154)
- “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." (para. 171)

- "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." (para. 172)
- "Traditional, rigid social mores are still relevant when considering thesituation which trafficked women would face if returned, but Albanian society is changing […] 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." (para. 211)

- “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.” (para. 213)

Main legal texts quoted in the decision:

International law

- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (hereafter Refugee Convention)
- Council of Europe Convention on Action Against Trafficking in Human Beings (adopted 3 May 2005, entered into force 1 February 2008)
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 (hereafter ECHR)
- 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 (No longer in force; date of end of validity 21 Dec 2013; repealed by Directive 2011/95/EU)
- Protocol to Prevent, Supress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003)

UK domestic law

- Borders, Citizenship and Immigration Act 2009
- Immigration Rules (adopted 23 May 1994, entered into force 1 October 1994)
- Refugee or Person in Need of International Protection (Qualification) Regulations SI2006/2525 (adopted 18 September 2006, entered into force 9 October 2006) (hereafter Protection Regulations)
- Statement of Changes in Immigration Rules CM6918 (hereafter the amended Immigration Rules)

Cases cited in the decision:

UK cases

- *VD (Trafficking) Albania CG* [2004] UKAIT 00115

Victims of trafficking as members of a particular social group:

- *Ex parte Hoxha* [2005] UKHL 19
- *SB (PSG – Protection Regulations – Regulation (6) Moldova CG* [2008] UKIAT 00002

Likelihood of persecution or treatment contrary to rights under Articles 3 and 8 of the ECHR:

- *AA (Uganda) v SSHD* [2008] EXCA Civ 579
- *EM (Lebanon) v SSHD* [2006] EWCA Civ 1531
- *Horvath* [2001] ACT 489
- *MK (Lesbians) CG* [2009] UKAIT 00036
- *R (Razgar) v SSHD* [2004] UKHL 27

Sufficiency of protection:

- *Bagdanavicius v SSHD* [2003] EWCA Civ 1605
- *Noune v SSHD* [2000] EWCA Civ 306

Internal relocation:

- *Januzi and Others v SSHD* [2006] UKHL 5
- *SSHD v AH (Sudan) and Others* [2007] UKHL 49

Risk of suicide:

- *J v Home Secretary* [2005] EWCA Civ 629
- *Y (Sri Lanka) v SSHD* [2009] EWCA Civ 362

Commentary

Refugee Status, Membership of a 'Particular Social Group' and Victims of Trafficking for Sexual Exploitation in Albania

The system of Country Guidance (CG) cases was developed by the UK Asylum and Immigration Tribunal (AIT) in 2001 with the aim of promoting consistency and efficiency in judicial decisions on cases concerning similar issues and similar factual basis. CG determinations provide guidance on the general circumstances of a certain group of asylum-seekers in a specific country and the risks, if any, they may face on return to that country. They involve evaluating a large number of expert witnesses, background evidence, and country reports. It is therefore a unique fact-based form of assessment as it involves a determination of both the particular circumstances of the individual case and the broader socio-political conditions in a specific country (Clayton and Firth 2018: 389; Thomas 2008).

CG cases have important ramifications for subsequent cases which involve issues determined in the Guidance and depend on similar evidence. Firstly, they are referred to by the Home Office when issuing "Operational Guidance Notes", which instruct case-workers assessing initial claims of asylum. Secondly, CG determinations are authoritative for relevant subsequent cases. A failure by an Immigration Judge to follow a relevant CG, or to provide reasons as to why the CG is inapplicable, may be an error of law.

Therefore, the CG case of *AM and BM* is an authoritative precedent for cases concerning the conditions faced by victims of trafficking (VoTs) on return to Albania and the likelihood of future persecution or treatment in breach of their rights under Article 3 of the ECHR.

AM and BM is also part of a consolidated judicial trend in the UK on whether former VoTs constitute members of a "Particular Social Group" (PSG) for the purposes of the Refugee Convention (Querton 2012). In this regard, in *SB (PSG – Protection regulation – Regulation 6) Moldova CG* [2008] (see CUREDI041UK002 for an analysis), the Upper Tribunal held that "former victims of trafficking for sexual exploitation" from Moldova can be members of a PSG, and are at a real risk of future persecution because of it such that returning to Moldova would constitute a breach of their rights under Article 3 of ECHR. In *AM and BM*, reasoning by analogy, the Upper Tribunal held that the conditions trafficked women returned to Albania face were not substantially different to those returned to Moldova, as set out in *SB*.

Prior to *AM and BM*, no similar precedent on the question of VoTs as members of a PSG was available on Albanian cases. This is because the previous CG case, *VD (Trafficking) Albania CG* [2004], did not address this question. As such, the Upper Tribunal in *AM and BM* held that female trafficked victims from Albania are members of a PSG and internal relocation is unreasonable if the appellants have certain characteristics. The Upper Tribunal's approach to interpreting the PSG Convention ground was consistent with the UK domestic legislation, and judicial precedents in *Shah and Islam [1999]*, *Fornah* [2006] and *SB (Moldova) CG* [2008] (Fouladvand and Ward 2019; Juss 2015). Namely, *Regulation 6(d) of the Refugee or Person in Need of International Protection Regulations 2006* states that "a group shall be considered to form a PSG 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."

The past experience of having been trafficked into sexual exploitation was found to be an "innate characteristic" for the purpose of the PSG membership as a

Convention ground. This is consistent with *PSG – Protection regulation – Regulation 6) Moldova CG* [2008] (see *CUREDI041UK002* for a case analysis).

Engaging with cultural and country evidence, in *AM and BM* the Upper Tribunal reached its conclusions by considering societal attitudes and social norms in Albania towards women where the country's cultural background gives rise to the social stigma of female victims of trafficking. Having considered at length expert witness statements and academic literature on the subject, the Upper Tribunal concluded that traditional Albanian society, especially in the northern part of the country, is influenced by a strict code of honour as set out by the "Kanun of Leke Dukagjinit" (Hynes et al 2018; Zhilla 2011; Schwandner-Sievers 2010; Davies 2009; Arsovska 2006). The treatment female victims of trafficking may receive from their families and communities as a result of following the "Kanun" – which could range from severe stigmatisation, forced arranged marriage and separation from illegitimate children to, at its worst, honour killings – could amount to persecution.

Regarding sufficiency of protection, the Upper Tribunal applied the test set out by the House of Lords in *Horvath* [2001] *and Bagdanavicius v SSHD* [2003] concerning the fear of persecution by a non-state agent. It agreed with the determination in *MK (Lesbians) CG* [2009] (holding that women without family support in Albania do not face a real risk of suffering treatment contrary to their rights under Article 3 of the ECHR or persecution) and distinguished the factual evidence between *AM and BM* and the *AA (Uganda) v SSHD [2008]*. It concluded that the issue concerning the sufficiency of protection of a trafficked victim from her former traffickers should be fact-specific. Concerning internal relocation, the Upper Tribunal followed the approach originally set out in *Januzi and others v SSHD* [2006], later confirmed in *AH (Sudan)* [2007]. Having considered the above-mentioned precedents in the light of the stigma experienced by VoTs in Albania as a result of the *Kanun*, the Upper Tribunal reasoned that a balancing exercise must be undertaken between the availability of internal relocation and the special needs a victim of trafficking may have.

AM and BM remains good law following the subsequent Country Guidance case of *TD and AD (Trafficked women) CG* [2016]. The latter provided an updated guidance on the issue of internal flight, while maintaining the Upper Tribunal's conclusions in *AM and BM* concerning the risk of persecution Albanian VoTs may face upon their return to Albania.

Literature related to the main issue(s) at stake:

Reports cited in the judgement:

- U.S. Department of State, 'Trafficking in Persons in Person' (Office of the Under Secretary for Democracy and Global Affairs and Bureau of Public Affairs 2009), available at <https://2001-2009.state.gov/g/tip/rls/tiprpt/2008//index.htm> accessed 20 October 2019.
- UNCHR 'Recommended Principles and Guidelines on Human Rights and Human Trafficking' (Geneva 2002)

Academic literature cited in the judgement:

- Davies, John. 2009. *"My Name Is Not Natasha": How Albanian Women in France Use Trafficking to Overcome Social Exclusion (1998-2001).* Amsterdam: Amsterdam University Press.

UNHCR guidelines cited in the commentary:

- UNHCR 'Guidelines on International Protection: "Membership of a Particular Social Group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees' (Geneva 2002) (UNHCR PSG Guidelines)

Academic literature cited in the template commentary:

- Arsovska, Jana. 2006. "Understanding a Culture of Violence and Crime: The Kanun of Lek Dukagjini and the Rise of the Albanian Sexual-Slavery Rackets". *European Journal of Crime, Criminal Law and Criminal Justice* 14 (2): 161–184.

- Clayton, Gina and Georgina Firth. 2018. *Immigration and Asylum Law*. Oxford: Oxford University Press.
- Fouladvand, Shahrzad and Tony Ward. 2019. “Human Trafficking, Vulnerability and the State”. *The Journal of Criminal Law* 83 (1): 39-54.
- Hynes, Patricia, Patrick Burland, Angela Thurnham, Jenniffer Dew, Lola Gani-Yusuf, Valbona Lenja, Hong Thi Tran, Aye Olatunde, and Alketa Gaxha. ‘”Between Two Fires”: Understanding Vulnerabilities and the Support Needs of People from Albania, Viet Nam and Nigeria Who Have Experienced Human Trafficking into the UK’ (University of Bedfordshire and International Organization for Migration 2019), available at < https://uobrep.openrepository.com/handle/10547/623422> accessed on 20 October 2019.
- Juss, Satvinder Singh. 2015. “Recognizing Refugee Status for Victims of Trafficking and the Myth of Progress”. *Refugee Survey Quarterly* 34(2) 107-123.
- Querton, Christel. 2012. “The Interpretation of the Convention Ground of “Membership of a Particular Social Group” in the Context of Gender-related Claims for Asylum: A Critical Analysis of the Tribunal’s Approach in the UK”. *The Refugee Law Initiative* (Working Papers) (3): 1–24.
- Schwandner-Sievers, Stephanie 2010. “Between Social Opprobrium and Repeat Trafficking: Chances and Choices of Albanian Women Deported from the UK”. In Leslie Holmes (ed), *Trafficking and Human Rights: European and Asia-Pacific Perspectives*, 95–115. Cheltenham: Edward Elgar.
- Thomas, Robert. 2008. “Consistency in Asylum Adjudication: Country Guidance and the Asylum Process in the United Kingdom”. *International Journ of Refugee Law* 20(4): 489-532.
- Zhilla, Fabian. 2011. “Organised Crime and Judicial Corruption in the Western Balkans: Are Customary Norms Playing Any Role?” *Journal of Financial Crime* 18(4): 387-404.

Disclaimer

NB: The approach of the UK courts regarding the interpretation of a PSG formation within the meaning of the Refugee Convention was not consistent with the UNHCR PSG Guidelines. The UNHCR (2002: 3) suggested that a PSG is "a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society" (emphasis added). In the recent case of DH (Particular Social Group: Mental Health: Afghanistan), Re [2020] UKUT 223, the Upper Tribunal followed the UNHCR's recommendation. Departed from its previous guidance, it held that a PSG can be established on the basis of either an innate or common characteristic of fundamental importance or social perception, rather than requiring both.

Last edited on 15.12.2019

CC BY ND

This case-law comment is licensed under a Creative Commons Attribution-NoDerivatives 4.0 International License (CC BY-ND 4.0) .

You may share this material, provided that appropriate credit is given. No derivatives or adaptations of this material are permitted.

Suggested citation of this case-law comment:

Mirzac, Iulia (2023): Refugee Status, Membership of a 'Particular Social Group' and Victims of Trafficking for Sexual Exploitation in Albania, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI041UK001, https://doi.org/10.48509/CUREDI041UK001.