



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

Appeal Number: PA/12142/2019  
(V)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 November 2020**

**Decision & Reasons  
Promulgated  
On 4 February 2021**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM  
DEPUTY UPPER TRIBUNAL JUDGE TROWLER**

**Between**

**M D  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Y Din, Counsel instructed by Charles Simmons  
Immigration Solicitors

For the Respondent: Ms S Cunha, Home Office Presenting Officer

**DECISION AND REASONS**

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

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant

and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The Appellant is a citizen of Albania. Her date of birth is 1 October 1992.
2. We have anonymised the Appellant properly applying the Upper Tribunal Immigration and Asylum Chamber Guidance Note 2013 No 1: Anonymity Orders.
3. On 7 March 2018, the Appellant was referred to the National Referral Mechanism (NRM) for the competent authority to decide whether she was a victim of trafficking (VOT). On 10 February 2019, the NRM decided that the Appellant was a victim of modern slavery.
4. The Appellant made an application for protection under the Refugee Convention. This application was refused by the Secretary of State on 2 December 2019. She appealed against the decision of the Secretary of State. Her appeal was dismissed by the First-tier Tribunal (First-tier Tribunal Judge O'Garro).
5. Following a remote error of law hearing, I set aside the decision of First-tier Tribunal Judge O'Garro to dismiss the Appellant's appeal in a decision dated 23 September 2020, following a hearing on 22 September 2020.
6. I found that the First-tier Tribunal made a material error of law. I set aside the decision of the First-tier Tribunal. The error of law decision reads as follows:

“17. The judge did not adequately reason the finding at [43] that there was no evidence that D was in a position to influence the authorities in Albania in the light of the evidence of corruption as found by the Upper Tribunal in TD and the CPIN of 2019 (set out in the Appellant's skeleton argument that was before the First-tier Tribunal). It was accepted that D was a trafficker. This is a material error of law. The assessment of risk on return to the Appellant's home area is flawed.

18. CPIN relied on by the judge postdates TD. The judge was unarguably entitled to attach weight to it. However, it was incumbent on the judge to adequately reason the decision. It was accepted by the Respondent that TD applied. It is not clear how the Appellant's circumstances, properly assessed by the judge at [34] and [35], fed into the risk assessment properly applying TD. While the CPIN is arguably capable of supporting an improvement in the position of those returning to Albania, the judge had to assess the reliability of that evidence and consider it in the light of TD and the Appellant's personal circumstances. The decision discloses an absence of such an assessment.

19. The judge said that the Appellant would not be at risk based on the “objective” evidence from the CPIN. The judge's conclusion

that the “objective” evidence shows protection is available is not adequately reasoned. The judge did not engage with the limitations of being accommodated in a shelter as found by the Upper Tribunal in TD or the generality of the CPIN. I accept Ms Isherwood’s submission that at [47] the judge said that the Appellant with her particular circumstances will be able to return safely and access protection and support, but it is not made clear applying TD in the Appellant’s circumstances how she reached this conclusion.

20. I set aside the decision of the First-tier Tribunal to dismiss the Appellant’s appeal. The appeal will be heard afresh in the Upper Tribunal.
  21. No reason was drawn to my attention to justify interfering with the assessment of the Appellant’s personal circumstances by the First-tier Tribunal (see [34] and [35]). The Appellant submitted a medical report at the error of law hearing. I was told that this was served on the Respondent. It was not material to the error of law but may be to the determination of her appeal.”
7. The matter came before us on 10<sup>th</sup> November to decide the Appellant’s appeal. There was an Appellant’s bundle (the bundle before the First-tier Tribunal) comprising 173 pages. This includes the Appellant’s first witness statement, A’s witness statement and letters concerning the Appellant’s health. There was a second bundle including a further witness statement from the Appellant and a psychiatric report prepared by Dr Sultan.
  8. The matter was originally listed for a face- to- face hearing. However, shortly before the hearing the Tribunal was informed that Mr Din representing the Appellant had tested positive for COVID-19 and requested a remote hearing. With the parties’ agreement a hybrid hearing took place. Ms Cunha representing the Secretary of State attended the Tribunal in person and Mr Din and the Appellant attended remotely. All were content to proceed on this basis.
  9. Ms Cunha indicated to us at the start of the hearing that she would wish to cross-examine the Appellant on issues contained in her most recent witness statement. However, technical difficulties arose during the hearing. Ms Cunha was not able to project her voice to enable the Appellant and Mr Din to clearly hear her despite the use of a microphone. She asked the Appellant several questions in cross-examination and we repeated those questions to the Appellant. Once the Appellant had given evidence the parties agreed that the matter should be adjourned for written submissions.
  10. Accordingly, we made directions as follows:-
    - (i) The Secretary of State is to file and serve written submissions by 24 November.

- (ii) The Appellant was to serve and file written submissions, in response, by 8 December.
- (iii) Should there be any delay or problems arising so that the directions are not complied with it is incumbent on the parties to notify the Tribunal.

11. The Secretary of State failed to comply with the directions. We received Mr Din's written submissions on 21 December 2020. The delay was as a result of the failure of the Secretary of State to comply with directions.

### **The Appellant's Evidence**

12. The Appellant's evidence is contained in her witness statements of 19 December 2019 and 2 November 2020. She gave oral evidence before the Upper Tribunal. Her evidence can be summarised.

13. The Appellant grew up with her parents and siblings in Tirana, Albania. The family was close. She finished high school in Albania and was looking forward to going to university to study English. In November 2013 she met D. They started a relationship. The Appellant's family did not approve of the relationship. The family are traditional. It is tradition for the Appellant's father to find her a suitable partner. Her father was very angry and told her that he would disown her if she continued her relationship with D. She continued to see D behind her father's back. He found out and prevented her from leaving the house. In April 2014, the Appellant then moved in with D and from then on, her family disassociated themselves with her and she lost contact with them.

14. D and the Appellant resided together in a bedsit. However, shortly after moving in together D's behaviour changed. He pimped her out to his friends. He took away her mobile phone and told her that she was now his property. The Appellant was frightened of him. She was sexually exploited by D. He received money from this. He was violent towards her. The Appellant had no-one to turn to. The Albanian justice system is corrupt. She had no faith in the police. In any event, she feared that if she told the police D would kill her family.

15. On one occasion D took her to a bar and there she realised that there were many women being exploited by D and his gang. In May 2014, the Appellant was beaten by D. She was advised to go to hospital, but D would not allow her to. On 4 June 2014 D took the Appellant to Italy. D took the Appellant's passport from her once they arrived in Rome. They travelled to an area near Milan called Pavia. There the Appellant stayed in a hostel with other women who were also sexually exploited. They were from different countries. D and his friends would bring clients to the hostel. The Appellant was petrified but felt that she did not have any other option but to comply. The women were given drugs and abused.

16. The Appellant lived in the hostel until April 2015 when she and a few other women were taken by D and his group to the UK. They travelled in the back of a lorry. It was a horrifying ordeal. When in the UK they were driven to a house.
17. The Appellant realised that she was pregnant and that she had no option other than to escape. She knew that if her pregnancy was known she would be forced to have an abortion. The Appellant describes how she was able to escape at [16] of her first witness statement. She described a chance meeting with an individual "T", a British citizen. She ended up living with T's sister ("A") in London. Her pregnancy was confirmed by a GP in around July 2015.
18. T and his sister were kind to the Appellant. T and the Appellant started a relationship. However, A was not happy about this because they were not married. The Appellant married T and he said that he would support her and the baby. However when she had her son, "AD" on 4 November 2015, T disappeared. He could not cope with the situation. He moved back into his mother's house. He has numerous health problems. He is bipolar and suffers from severe depression. The Appellant continued to live with A who continues to offer support to the Appellant and AD.
19. The Appellant does not have any contact with D. She still fears him. She fears that should she return to Albania he would know immediately, and he would do anything to harm her and her son. He is not able to locate her in the UK. The Appellant is not in fear of her father but of D and gang members. Her case is that police in Albania do not provide protection because they are corrupt.
20. The Appellant could not relocate in Albania. She would be found and killed. The Appellant found out that she was pregnant with a second child on 27 July 2020. She has given birth to another son "AV," following a one-night stand with his father. She did not disclose her pregnancy earlier because she was distressed because she is not in a relationship with the child's father. Although the father wanted to be named as the child's father on the birth certificate, he does not want a relationship with the Appellant and does not want to be part of the child's life.
21. The Appellant is a victim of sex trafficking and has continued to suffer mentally and psychologically as a result. She suffers from anxiety and depression. She has nightmares. She cannot cope with the fear of returning to Albania. She was receiving counselling and support however, because of COVID-19, she has not received face to face interaction and counselling that she requires.
22. The Appellant is now a single mother of two children who are dependent on her to look after them. She finds this difficult. She is not able to permanently reside with A and A's husband.

23. The Appellant confirmed in oral evidence that she has not had contact with her family and that she does not have contact with the father of her youngest child. She confirmed that she is educated to secondary school level only.

### **The Medical Evidence**

24. The Appellant relied on her medical report prepared by Dr Javaid Sultan. Dr Sultan is a consultant psychiatrist in general adult psychiatry. He met with the Appellant for an hour and a half on 7 March 2020. He did not have access to the Appellant's GP's records or any other documentation relating to her appeal. The Appellant told him that she had not had contact with psychiatric services in the UK or Albania. She said that she had been seen by her GP when she gave birth to her eldest son and since then had had regular check-ups.
25. The Appellant told Dr Sultan that she started to feel anxious, low, and tearful after moving in with D. She told him that she had low mood, felt anxious and frightened. She suffered from tearfulness and reduced concentration, lack of sleep, decreased energy levels and low appetite which had worsened in the last six to eight months. She has negative and fleeting thoughts of self-harm with hopelessness and helplessness. The thought of going back to Albania terrifies the Appellant. She cried throughout the assessment and was very concerned about her son's safety.
26. The Appellant was diagnosed with hepatitis B which she believes is due to having unprotected sex while being forced to act as a sex worker. She did not have previous mental illness before 2014. There is no family history of mental illness.
27. In Section 3 of the report Dr Sultan engages with the psychiatric diagnosis and prognosis. In his opinion the Appellant's presentation is characterised by persistent low mood, anhedonia, lack of energy levels causing exhaustion, reduced concentration, late insomnia, reduced appetite, and some reluctance in facing the community leading to a decline in social functioning. The Appellant meets the criteria for diagnosis of mild to moderate depressive illness, anxiety symptoms and PTSD-like symptoms (anxiety, sweating, nightmares, startled reaction and reliving experiences). If her mental illness is left untreated she is at high risk of further deterioration of her mental health and that of self-neglect and causing serious harm to herself through her negative emotions. She requires urgent treatment for her depressive illness and anxiety. She is currently receiving medical treatment and would benefit from starting on an antidepressant with hypnotic benefit (Mirtazapine 15 milligrams daily). Without such treatment there is a risk of further worsening of her mental state and increased risk of deliberate self-harm and suicide.
28. The Appellant would benefit from psychological therapy such as cognitive behavioural therapy for depression and anxiety symptoms and trauma

counselling for her traumatic experience having been a sex worker with a history of physical and emotional abuse. She is currently not receiving treatment but needs to be on medication for six to twelve months along with psychological interventions. The consultant recommends a referral by her GP to the local community mental health team for assessment and initiation of pharmacological and psychological interventions. The Appellant's depressive illness with anxiety and panic attacks are likely to deteriorate if she returns to Albania. She is vulnerable to exploitation and isolation which can increase if her mental health symptoms get worse. The deterioration in mental health will have a negative impact on her child's overall care.

29. The Appellant reported a worsening of symptoms of depression in the last few months and increasing levels of anxiety and stress due to escalation of concerns about her and her son's safety. Her family has already disowned her and this has a negative impact on her self-esteem, confidence and feelings of worthlessness. She reported fleeting thoughts of suicide and concerns about her ability to cope living on her own in her home country without any personal, emotional support and with the possibility of threats.
30. The Appellant suffers from mild to moderate depressive illness with anxiety and PTS like symptoms. Without appropriate treatment she is likely to suffer further worsening of her symptoms, which put her at risk of self-neglect. It is highly likely that her depressive illness and lack of personal support in her home country will have negative implications on her physical and mental health. Without treatment there is a risk of further worsening of her mental state and an increased risk of deliberate self-harm and suicide.

### **TD and AD (Trafficked women) CG [2016] UKUT 00092**

31. The headnote of the current country guidance decision reads as follows: -

*"Much of the guidance given in AM & BM (Trafficked women) Albania CG [2010] UKUT 00080 (IAC) is maintained. Where that guidance has been amended or supplemented by this decision it has been highlighted in bold:*

- a) It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds.*
- b) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked*

woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child.

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



*her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.*

*h) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following:*

- 1) The social status and economic standing of her family*
- 2) The level of education of the victim of trafficking or her family*
- 3) The victim of trafficking's state of health, particularly her mental health*
- 4) The presence of an illegitimate child*
- 5) The area of origin*
- 6) Age*
- 7) What support network will be available."*

**The Country Policy and Information Note: Trafficking of Women for Sexual Exploitation, Albania, June 2020 ("2020 CPIN")**

32. The Secretary of State chose not to make submissions. We have considered in some detail the 2020 CPIN. From it we summarise the following general points: -

- (a)** Trafficking remains a problem in Albania.
- (b)** The percentage of those referred to shelters and re-trafficked is no longer 18% the figure has decreased and now stands at 4% to 5%.
- (c)** The evidence does not support that there are very strong grounds supported by cogent evidence to support "not taking into account the findings in TD and AD"
- (d)** There have been judicial reforms in Albania.
- (e)** The shelters provide free healthcare and there is usually a psychiatrist. Every person leaving a shelter must receive financial benefits.
- (f)** The state will pay for childcare for single women.

- (g)** Albania has made significant efforts to improve its response to trafficking in general the authorities are willing and able to protect victims, but this may not be sufficient in every case.
- (h)** There are difficulties faced by those relocating. The situation has improved since TD and AD, but stigma is still a concern.
- (i)** It is possible for women to live alone in Tirana however those with children are particularly vulnerable. Women can relocate to Tirana however it is harder to relocate to a rural area.
- (j)** NGOs reported an improved co-operation with law enforcement and prosecutors.
- (k)** Various sources have expressed concern to the Home Office FFM about police response to VOT.
- (l)** The USSD TiP Report 2019 states “Law enforcement did not consistently offer sufficient security and support and victims and families received threats during court proceedings.”
- (m)** The Home Office FFM were told that there is no protection programme available for VOT whilst a trial is pending and victims are too scared to denounce traffickers.
- (n)** The USSD TiP Report 2019 states that the government of Albania does not meet minimum standards for the elimination of trafficking but is making significant efforts to. The same report noted that official complicity and corruption were significant concerns. The National Coalition of Anti-Trafficking Services (NCATS) was formed in 2007. There are five shelters, they support VOT, they provide a number of services listed at 9.1.3 of the CPIN. There is a psychiatrist available in a shelter, there is sufficient capacity to meet the demand. Funding has steadily increased but there are financial constraints and shelters are still under funded.
- (o)** There are rehabilitation services and a limited reintegration package including long-term monitoring. The integration package includes support for independent living typically up to a year. On leaving the shelter the VOT is given assistance finding employment and to integrate into the labour market.
- (p)** There is support to pay for kindergarten in Tirana however state support for women with children is basic.
- (q)** There is normally a psychiatrist in a shelter. Priority care is limited and there are “few chances for long-term support for really serious cases”.

- (r) The government tries to help women become independent, but it is difficult for those with children. The social services in the municipality of Tirana monitor all adult cases every six to twelve months. There is societal stigma and discrimination faced by VOT. Albania is a patriarchal society where victims of gender-based violence are often blamed. There is prejudice against people who have been in shelters although this has decreased however, potential employees would not be told of a person's history. A woman can live alone in Tirana and internally relocate there however, in rural areas this would be very difficult without family or social support. Even if a woman has economic means it would be "very scary" to live alone because of psychological pressure.

### **The Appellant's Submissions**

33. Mr Din's submissions are very lengthy. We summarise the main points made therein.
34. There is no justification to depart from the decision of the Upper Tribunal in TD and AD (trafficked women) [2016] UKUT 00092.
35. Corruption still exists in Albania (see paragraphs 93 and 94 TD and AD).
36. The Country Policy and Information Note: Trafficking of Women for Sexual Exploitation, Albania, June 2020 ("2020 CPIN") makes reference to the USSD TiP Report 2019 and the following is relied on:-
- (a) "Articles 110(a) and 128(b) of the Criminal Code criminalised sex trafficking and labour trafficking and prescribed penalties of eight to fifteen years' imprisonment for trafficking offences involving an adult victim, and ten to twenty years' imprisonment for an offence involving a child victim." (Paragraph 4.1.1 page 22).
- (b) "The USSD TiP Report 2019 noted that,
- "The Albanian state police (ASP) investigated 38 trafficking cases with 51 suspects [in 2018] (69 cases with 80 suspects in 2017); nine of these suspects were investigated for child trafficking (22 in 2017) and 42 for adult trafficking (58 in 2017). The ASP also investigated three suspects for knowingly soliciting or patronising a sex trafficking victim to perform a commercial sex act (none in 2017)". (Paragraph 5.1, page 24).
- (c) "The USSD TiP Report 2019 further noted,
- "Experts reported police did not participate consistently in the mobile victim identification units despite signing a memorandum of understanding that formalised their participation. Law enforcement rarely initiated cases when civil society identified a potential victim, but ASP noted definitional differences with civil

society on what constituted trafficking caused obstacles in identification”.” (Paragraph 5.16, page 25).

- (d) “In the Albanian 2019 Report, the European Commission stated that Albania should strengthen its criminal justice system”. It further stated,

“The prosecutor’s office registered 30 new criminal proceedings for trafficking in 2017 and 21 in 2018. Most of the referrals involved adults. The number of final convictions remained very low (nine in 2017 and three in 2018). In a report published in March 2020, the European Commission stated that in 2019, 25 new cases of human trafficking were referred to the prosecution. It noted that there were five final convictions in 2019.” (Paragraph 6.1.1, page 26).

- (e) “The Home Office FFT were told that UN agencies have invested considerably in the training of the judiciary which is arguably the weakest part of the system. Traffickers have been able to escape justice due to its corruption or inefficiency. This makes it difficult for the victims to trust in and seek redress from the justice system. There is hope that the ongoing justice reform and the vetting process of the judges and prosecutors will improve the judicial system.” (Paragraph 6.1.1, page 27).

- (f) The USSD TiP Report 2019 stated:

“The government of Albania does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government demonstrated overall increasing efforts compared to the previous reporting period; therefore, Albania remained on Tier 2 [this indicates that the government does not fully meet the TVPA’s (Trafficking Victims Protection Acts)] standards but is making significant efforts to bring itself into compliance with those standards.” (Paragraph 7.1, page 31).

It should be noted that the minimum standards for the elimination of trafficking which are referred to are set out in Section 108 Victims of Trafficking and Violence Protection Act 2000 which states;

- (1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.
- (2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should

prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

- (3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offence.
- (4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in person”.

The 2000 Act was not considered by the Upper Tribunal in TD and AD but is of relevance given that the 2020 CPIN refers to the 2019 USSD TiP Report which in turn uses the 2000 Act as the benchmark for determining compliance.

- (g) “In the Albania 2019 Report, the European Commission stated that Albania should (step up efforts to prevent human trafficking).” (Paragraph 7.1.3, page 32).
- (h) “The USSD TiP Report 2019 noted, “The government did not report any investigations, prosecutions or convictions of government employees complicit in trafficking offences; however, official complicity and corruption were significant concerns”.” (paragraph 7.5.1, page 35).

37. At page 61 of the USSD Tip 2019 report the following is stated:

“However, the government did not meet the minimum standards in several key areas. The government continued to investigate, prosecute and convict fewer cases, leading to the lowest level of reported law enforcement actions in four years. Additionally, the government lacked proactive identification efforts and law enforcement, in particular, did not consistently participate in mobile victim identification units or consistently screen vulnerable populations. The government continued to delay funding for NGO run shelters and did not consistently apply victim centred approaches to investigations and prosecutions”.

38. The following is stated at page 62:

“Unlike some previous years, the government did not knowingly penalise victims but may have penalised some trafficking victims due to inadequate identification efforts. Five victims co-operated with law enforcement in investigations and prosecutions (23 in 2017); however, the government did not consistently apply a victim centred approach to investigations and prosecutions. Law enforcement did not consistently offer sufficient security and support, and victims and their families received threats during court proceedings.”

39. The Appellant seeks to rely on the 2017 CPIN. It is stated that this remains on the government website it refers to a USSD 2016 Human Rights Practices Report this report was updated in 2019. However, it is not referred to in the 2020 CPIN. From the 2019 USSD Report the Appellant makes the following points:
- (a) At paragraph 9.2.2, page 12 of the 2017 CPIN the following is stated “The US State Department 2016 Human Rights Practices Report noted: “Police did not always enforce the law equitably”. The updated 2019 Report notes at page 16, “While prosecutions made significant process in pursuing low level public corruption cases, including corrupt prosecutors and judges, prosecution of higher level crimes remain rare due to investigators’ fear of retribution, a general lack of resources, and corruption within the judiciary itself “... police corruption remained a problem ... police did not always enforce the law equitably”.
  - (b) Paragraph 11.1.6, page 24 of the 2017 CPIN notes “The US State Department’s 2016 Human Rights Practices Report noted: “The law provides criminal penalties for corruption by public officials, but the government did not implement the law effectively and officials frequently engaged in corrupt practices with impunity”. The updated USSD 2019 report at page 15 notes “Officials frequently engaged in corrupt practices with impunity”.
  - (c) Paragraph 11.1.7, page 25 of the 2017 CPIN notes “The same USSD Report noted: “Corruption was pervasive in all branches of government”. The updated US State Department’s 2019 Human Rights Practices Report at page 15 notes “Pervasive corruption in all branches of government and municipal institutions”.
40. The Appellant relies on the commission staff, working document Albania 2020 Report accompanying the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020, communication on EU enlargement policy, 6<sup>th</sup> October 2020. Given its age, it does not form part of the 2020 country information. It supports that corruption remains widespread.
41. D is in a position of influence. He is part of a larger organisation. He acted in concert with others. There is widespread corruption and a low chance that he will be convicted. While there is in general a sufficiency of protection, relying on TD and AD, this would not be the case for the Appellant. She relies on a report from the Home Office Fact-Finding Mission (FFM) published in 2018 to support that Albania cannot provide protection for all.
42. The Appellant could be offered a place in a guarded shelter, but once she leaves, she will be at risk of being re-trafficked. The CPIN 2020 supports that stigma and discrimination persist. It says that 4% to 5% are at risk of

being re-trafficked. In this case there is a risk of being re-trafficked. The package offered (2020 CPIN 10.2.1) will not reduce the risk to this Appellant. There is insufficient financial support to live independently. There is a narrow scope of employability arising from the economic situation, stigma (the Appellant will be labelled a “kurva”) and societal exclusion. These factors will push the Appellant into the grey economy. In addition, her employment opportunities are further narrowed by mental health issues. Although the packages that have been put in place with the integration of a VOT back into society builds upon position of TD and AD (paragraphs 85 to 86). These packages and measures do not reduce the risk of a VOT being placed in a position of vulnerability.

43. The view of TD and AD is that the Albanian state does and can provide shelter for a period of two years for a returning VOT and that they are at risk of being re-trafficked subject to the factors which led to the initial trafficking as well as the personal circumstances of the VOT.
44. There is no specific funded mental health provision available after leaving the shelter. The Appellant joins the same system as others. Given the stigma and societal views, this will add a layer to the complexities of gaining treatment. The report of the Home Office FFM, February 2018, page 93 states that there is “Limited support for long-term mental health issues”.
45. The 2020 CPIN at paragraph 11.3.1 notes that there is a move to a community-based system of mental health but “Community centres are always full. Some religious organisations also have spaces, but these are always full. There are very few chances for long-term support for really serious cases.” Given that the applicant is a VOT, she is likely to be stigmatised and even if she was able to sidestep the stigma the lack of care available would further impact on her ability to access the grey economy to support her own family unit therefore increasing vulnerabilities.
46. Where a VOT is rejected this does not just restrict the socio-economic pathway when it comes to employment, it restricts the ability of a VOT to relocate as a VOT cannot return to the area of their origins, she would have to lay roots elsewhere which would require the creation of a false narrative. The integration programme does not seek to create new identities or background.
47. Societal views have not fundamentally altered in the period since TD and AD. Societal exclusion of the Appellant and her children render her more vulnerable. The CPIN 2020 highlights that there is additional support mechanism in place for VOT leaving shelters however support is patchy and haphazard.
48. The USSD TiP Report 2019 noted Albania ought to “Create funding mechanisms that allocate adequate funding and resources on a consistent and regular basis to the government run and NGO run shelters for

trafficking victims” (see page 62). The report notes that funding has steadily increased over the past four years; however, funding delays persist which hinder shelter operations. The support is not universally available.

49. The Appellant is now aged 28 having moved from Albania when she was 21, she has never worked, she has limited education and she has no family interaction. She suffers from mild to moderate depressive illness, anxiety symptoms and PTSD like symptoms. In Dr Sultan’s opinion she has depressive illness with anxiety and panic attacks which are likely to deteriorate if she should return. She expressed fleeting thoughts of suicide and concerns about her ability to cope living on her own in Albania
50. The Appellant may well be regarded as a “heavy case” (see paragraph 110(e) TD and AD) and be allowed to remain in any shelter for a longer period, but she will have to eventually leave and given the attitude of Albanian society which has not changed, what is said at paragraph 171 of TD and AD is still relevant when considering the effects upon the Appellant.
51. The 2020 CPIN (paragraph 10.7.2, page 56) states that “Support workers advise people who have experienced trafficking not to share personal information with others so they, and their children, could avoid being stigmatised.”
52. Particular vulnerabilities of the Appellant include having two children, mental health issues and a lack of formal vocational skills.
53. It is submitted that there are very significant obstacles in the context of paragraph 276ADE(1)(vi) of the Immigration Rules with reference to Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813.

### **Findings and reasons**

54. The judge of the First-tier Tribunal made several findings that have been maintained. The judge found that the Appellant was credible and accepted that she was a victim of trafficking. She said that the Appellant had lived in Tirana prior to leaving Albania and that she has family there but has no contact with them because they disapproved of her relationship with D. The judge accepted her evidence about the estrangement from the Appellant’s family following their disapproval of D. She accepted that the Appellant had an illegitimate child and that she was educated up to secondary school but that there was no evidence that she has vocational skills which she could use to find employment. The judge summarised at paragraph 37 of the decision that the Appellant would be returning to Albania as a VOT with an illegitimate child and no family support. These findings are the starting point ( save that the Appellant now has two illegitimate children) for our assessment.



55. In response to our directions made on 10 November 2020, Mr Din on behalf of the Appellant submitted lengthy written submissions along with further background evidence. The Secretary of State failed to comply with the directions. Regrettably, we have not been assisted by the Secretary of State as far as this appeal is concerned.
56. Having heard the evidence we agree with the First-tier Tribunal in that the Appellant is a credible witness.
57. We accept the Appellant's submissions in relation to D. Should the Appellant return to Tirana we find that she would be at risk from D. Notwithstanding the passage of time and that the Appellant has not had contact with D since she was trafficked, we find that it is reasonably likely that D is part of a human trafficking organisation which traffic women from Albania into other countries<sup>1</sup>.
58. We apply the country guidance case of TD and AD. We have not been asked by the Secretary of State to depart from it. The 2020 CPIN says that the findings in TD and AD should be taken into account. There is no cogent reason not to apply the current country guidance. In some respects the situation in Albania may have improved, but as far as this appeal is concerned there are no material changes brought to our attention.
59. The Albanian government have an effective NRM in place. There is in place general Horvath standard (Horvath v Secretary of State for the Home Department [2000] UKHL 37) sufficiency of protection. It is generally available to victims of trafficking. Whether there is sufficiency of protection in this case depends on the Appellant's ability to access this. This in turn properly applying TD and AD depends on her individual circumstances.
60. Before looking at the Appellant's circumstances. We take into account the observations made by the Upper Tribunal's findings about corruption because this is material to the Appellant's perception of whether there is sufficiency of protection: -

93. There is however consistent evidence in respect of corruption. The Needs Assessment records that the majority of reports and respondents to that research cited corruption – in the form of complicity between local police/officials and traffickers – as a “major barrier” to combating trafficking. Mr Chenciner refers to the report by the Institute for Democracy and Mediation concerning the pervasive and persistent problem of “a high level” of corruption in Albanian society. That 2015 report found that 36% of public respondents admitted to bribing the police “very often”. Professor Haxhiymeri offered her anecdotal evidence that in her experience over the years she has come across several cases of police officers collaborating with perpetrators of domestic violence. The only prosecutions she was aware of took place in the early part of 2015 when two police officers

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<sup>1</sup> See 2020 CPIN paragraph 3.3

were arrested for working with traffickers. This accords with the findings in the – earlier – TIP report that although corruption continues to be highlighted as an issue, there were no investigations of government officials complicit in trafficking offenses between 2013 and 2014. The TIP also acknowledges that in 2014 the continuing problem of corruption has “hampered the efficacy of training”.

94. Corruption is, by its very nature, hidden and not susceptible to audit. The fact that two officers have been recently prosecuted is a positive sign that whilst corruption is apparently widespread it is not so endemic that prosecutions cannot be successfully brought. It does however remain a serious problem, not least in the minds of the Albanian public who after many decades of living with bribery as a way of life may find it difficult to see any change. In this regard we accept the evidence that for many VOTs there is a fear that they will have to pay the police off –with either money or sexual favours. That subjective fear, whether it is well founded in respect of an individual officer or not, can impact upon personal decisions about whether to enter the NRM. We accept that there may be a number of officers who remain susceptible to bribery. We accept that there may be some individual officers who hold “traditional” and misogynistic views about how women should behave. In the absence of any hard data we are however unable to find that this is a general, objective real risk to all women entering the NRM.

61. We also take into account Mr Din’s written submissions (most of which concern sufficiency of protection) and the CPIN 2020 that corruption in Albania is significant<sup>2</sup>. We accept that there is corruption and there are significant shortcomings in the system. The problem for this Appellant is that she has a genuine fear of D on her return and a total distrust in the police to protect her. She has several risk factors that properly applying TD and AD would prevent her accessing sufficiency of protection. She has no support from her family, she is a victim of trafficking with two illegitimate children from separate fathers. She has no education that is likely to lead to independence. She has not social standing or status. For reasons we will explain in due course she has poor mental health.
62. We do not believe that in this case sufficiency of protection would be available to the Appellant taking into account her individual factors and her fear of the authorities because of the prevalence of corruption in Albania.
63. In any event, if the Appellant were to access a shelter, at some stage she would be expected to leave it. At 9.7.2 of the CPIN it is recorded that the Ministry of Interior said that there is no time limit on the length of time a person can stay in a shelter. The original source is from a person from the Albanian Ministry of Interior to the FFM in 2017.<sup>3</sup> There is no evidence

<sup>2</sup> See CPIN 2020 paragraph 7.5.1

<sup>3</sup> Report of a Home Office Fact Finding Mission (FFM) Albania published February 2018

brought to our attention of any individual staying in a shelter for more than 2 years, the time given to “heavy cases.”<sup>4</sup> Thus, there is a level of uncertainty concerning how long she could remain in a shelter undermining sufficiency of protection in this case.

64. A further complication is that this Appellant is from Tirana. Even if she accesses a shelter, the time she can stay there is not certain. The Appellant could not remain in Tirana once she is living outside of a shelter, because she is at risk from D.
65. She would have to relocate outside the capital. In Secretary of State for the Home Department v AH (Sudan) [2007] UKHL 49 the House of Lords make clear that the question of whether internal flight is “reasonable” is not to be equated with the test under Article 3 ECHR.<sup>5</sup> At 20 Baroness Hale cites with approval the UNHCR view that the test is whether the individual will be able to live a “relatively normal life without undue hardship”, itself a formulation approved by their Lordships in Januzi<sup>6</sup>:

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<sup>4</sup> paragraph 110 (e) TD and AD (Trafficked women) CG [2016] UKUT 00092

<sup>5</sup> Lord Bingham refers [at 5] to his own guidance in Januzi v Secretary of State for the Home Department [2006] UKHL 5:

“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, evidence 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.”

<sup>6</sup> “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.”

66. The background evidence paints a very bleak picture for a single woman, victim of trafficking with two illegitimate children, living outside Tirana<sup>7</sup>. Properly applying the law, we find that expecting this Appellant to relocate outside Tirana would not be reasonable.
67. There are additional factors that make relocation unreasonable. The Appellant has limited education and two young illegitimate children. She is a single mother with no family support. Certainly, she would gain skills in the shelter to assist her to make it on her own. However, we find that this Appellant would need significant long-term support to put any acquired skills into practice, in the light of her personal circumstances. She has limited education and no skills. She has never worked in the lawful economy. We cannot be sure what support this Appellant would receive considering her complex needs and the financial constraints upon the shelters. There are funding issues which we find make matters more precarious<sup>8</sup>.
68. We find that this Appellant does not have what could be categorised as very serious mental health issues. She has mild- to- moderate depression and symptoms of post-traumatic stress disorder. However, we accept that her mental health is poor and likely to deteriorate on return to Albania. We attach weight the evidence of the expert, in the absence of challenge or any obvious reason not to do so. We are satisfied that the Appellant has by any account been severely traumatised by her experiences. We accept that there is some treatment available on return; however, she is genuinely frightened of returning to Albania and very vulnerable. This we find will make her less resilient. We note what the Upper Tribunal said in TD and AD:-

“109. For less resilient or adaptable women however, the path to financial independence is not so straightforward. Professor Haxhiymeri describes the assistance offered by the shelters, the Albanian government or the IOM as “superficial” and stressed that such training packages rarely help women in the long run. The problem she identifies is that women in Albania tend to find work in the low-skilled, informal sector where employment is not secure or protected, and where wages rarely keep up with the costs of living: this is the “grey economy” discussed in *AM & BM*<sup>9</sup>. All of the evidence supports a finding that the financial constraints make survival in the cities difficult: we accept Professor Haxhiymeri’s evidence of her personal experience of trying to find accommodation for survivors of domestic violence. Workers at her NGO typically find that the cost of basic accommodation in Tirana, even in the outskirts, is €200 per

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<sup>7</sup> 2020 CPIN paragraph 2.5.2

<sup>8</sup> See 2020 CPIN paragraph 9.

<sup>9</sup>

month whereas a woman working in those conditions will typically earn no more than €150. The respondents to the research consistently reported that it is “very difficult” to live alone because of the financial constraints women face, in particular in staying in employment and in paying rent. The UNP report confirms that there is no provision for VOTs to have access to social housing, and that they are therefore forced to rent in the private sector. The high unemployment rate means that people are forced to take “any kind of job”. The Needs Assessment succinctly summarises this situation: “most victims are returning to the same place, facing the same problems that they had before they were trafficked”. The difference now being that they must face such daily grind whilst living with the physical, psychological and social consequences of that experience.

110. At paragraphs 147-151 of *AM & BM*, the Tribunal considered the evidence of Dr Agnew-Davies in respect of the psychological effects of trafficking. We adopt and underline the view expressed in that case that in all claims it is important to consider the circumstances of the individual, including her strength, age, and psychological make-up. For VOTs who have been through extreme traumatic experiences it is not difficult to see how they are likely to suffer psychological consequences such as complex PTSD. The VOT may suffer lasting physical damage as a result of her experiences. These are important factors which must be considered when assessing whether internal flight is reasonable for any individual VOT. Whilst the evidence relating to psychological support services for VOTs once they have left the shelters suggests some availability, that it is undoubtedly patchy and in many cases wholly inadequate as we have observed above. An individual, because of her condition, may have difficulty in accessing or engaging with such services that do exist. She may be required to pay for mental health care, increasing her financial burden. These are all matters relevant to the consideration of whether internal flight is reasonably available.

69. The Appellant’s poor mental health is another significant factor which will undermine her ability to access sufficiency of protection. It is also another weighty factor undermining internal flight as a reasonable option. To summarise we conclude that in the absence of sufficiency of protection this Appellant is at risk on return. Internal relocation is not a reasonable option for her. Thus, she is refugee in need of international protection. Her appeal is allowed.

## **Notice of Decision**

The appeal is allowed on protection grounds.

The appeal is allowed under Article 3 European Convention on Human Rights.

The appeal is allowed on humanitarian grounds.

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

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

Signed                      Joanna McWilliam

Date 22 January 2021

Upper Tribunal Judge McWilliam