

The CPIN and assessing merits in Albanian claims

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1. This seminar is intended to help lawyers in assessing merits in Albanian asylum claims. It focuses principally on asylum claims based on blood feuds, but also deals with asylum claims based on domestic violence and human trafficking.
2. In short, I will argue that these claims, in general, have strong merits. Lawyers should be pursuing appeals and fresh claims in these cases and, where they are certified, should be pursuing challenges by judicial review.

Blood feuds, certification and the CPIN

3. The Home Office frequently certifies claims based on blood feud. Virtually all of these certifications are unlawful, and all of them should be challenged by judicial review.
4. Remember that a claim can only be certified if it is “*clearly unfounded*”, i.e. “*so clearly without substance that it was bound to fail*”, *Thangarasa and Yogathas* [2002] UKHL 36. If any reasonable doubt exists as to whether the claim may succeed then it is not clearly unfounded, *ZT (Kosovo)* [2009] UKHL 6. This exercise involves considering whether the claim might succeed before a hypothetical First-tier Tribunal.
5. Claims are typically certified on the basis of sufficiency of protection and internal relocation.
6. In considering sufficiency of protection, the starting point of a hypothetical First-tier Tribunal would be the country guidance in *EH (blood feuds) Albania CG* [2012] UKUT 00348 (IAC): “*The Albanian state has taken steps to improve state protection, but in*

areas where Kanun law predominates (particularly in northern Albania) those steps do not yet provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant... Where there is an active feud affecting an individual and self-confinement is the only option, that person will normally qualify for refugee status.” In other words, where there is an active feud, there is not generally a sufficiency of protection.

7. *EH* refers to a lack of protection “particularly in northern Albania”, which is where the majority of blood feud asylum claimants originate. But this should not be taken as excluding risk in central and southern areas. It is clear from *TD and AD (Trafficked women)* CG [2016] UKUT 92 (IAC) at [111] that internal migration from north to south has transplanted conservative northern cultural mores into the more liberal south. So depending on the circumstances of the case, there may be a lack of adequate protection even in central and southern areas of the country.
8. In a case to which the *EH* country guidance squarely applies, the onus would be on the Home Office to explain why the tribunal should depart from that country guidance and hold that there is a general sufficiency of protection for blood feud victims. It would only do so if there were “*very strong grounds supported by cogent evidence*” for departing from the country guidance: *SG (Iraq)* [2012] EWCA Civ 940.
9. In March 2019 I carried out a detailed evaluation of the Home Office’s October 2018 Country Policy and Information Note (CPIN) on blood feuds, and explained at length why the evidence set out in the CPIN does not justify a departure from *EH*:
<https://www.gardencourtchambers.co.uk/news/albanian-blood-feuds-and-certification-a-critical-view> The CPIN was updated in February 2020 and I have reviewed the updated CPIN here:
<https://www.gardencourtchambers.co.uk/news/albanian-blood-feuds-an-update> I would urge all practitioners to read these.
10. The second issue is internal relocation. The Home Office frequently alleges that the risk is confined to the home area and that the aggressor family is not sufficiently powerful or influential to target the client elsewhere.
11. Here I would urge practitioners to look beyond the four corners of *EH* and look at other country guidance case law, which makes abundantly clear that in Albania it is easy to track people down through word of mouth and family/community ties. In *AM*

and *BM (Trafficked women) Albania CG* [2010] UKUT 80 (IAC) the Tribunal unequivocally accepted this:

“186. [...]Moreover we would emphasise that, as stated above, Albania is a country with a relatively small population. Dr Schwandner-Sievers refers to common socio-cultural conduct in which every person was socially positioned. We note the comment that the Director of the Anti-Government Unit, Ms Irena Targa, made to Dr Schwandner-Sievers that:

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

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

12. A very similar observation is found more recently in *BF (Tirana - gay men) Albania CG* [2019] UKUT 93 (IAC):

“We accept Ms Young's evidence that a person's whereabouts may become known in Tirana by word of mouth. Albania is a relatively small country and

we accept as entirely plausible that a person might be traced via family or other connections being made on enquiry in Tirana. Whether that would occur would depend on the family being motivated to make such enquiries (which motivation would probably depend on an awareness that the person may be living there) and the extent of its hostility. That is a question for determination on the evidence in each case.”

13. These cases are not about blood feud – but they make a more general point, namely that the nature of Albanian society, with close-knit family ties, is such that a sufficiently motivated persecutor can find their victim in another part of Albania. That is as applicable to blood feud as it is to trafficking or homophobia. The CPIN does not undercut it – indeed, a report by the Belgian Commissioner-General for Refugees and Stateless Persons (CEDOCA), the source most frequently cited by the CPIN, actually acknowledges the difficulty of avoiding problems by internal relocation.¹

14. Returning to *EH*, it states at [70]:

“Internal relocation will be effective to protect an appellant only where the risk does not extend beyond the appellant's local area and he is unlikely to be traced in the rest of Albania by the aggressor clan. A crucial factor in establishing whether internal relocation is a real possibility is the geographical and political reach of the aggressor clan: where that clan has government connections, locally or more widely, the requirement to transfer civil registration to a new area, as set out at 2.4.4 above, would appear to obviate the possibility of 'disappearing' in another part of the country, and would be likely to drive the male members of a victim clan to self-confinement in the home area as an alternative. Whether internal relocation is reasonable in any particular appeal will always be a question of fact for the fact-finding Tribunal.”

¹ CEDOCA, “Blood Feuds in contemporary Albania: Characterisation, Prevalence and Response by the State,” 29 June 2017, p. 27:

“According to multiple sources, some of the affected families are not particularly safer after having moved away from where they were living. The Director of the Prosecutor’s Office stated that for the affected families “the fear can be everywhere”. Also a representative of the Albanian Helsinki Committee warned that in the case of a contemporary blood feud situation, a potential victim will not necessarily be safe after having moved inside Albania. He explained that “each country is a village” nowadays... Elsa Ballauri confirmed that there are situations where moving is not an option because the potential targets will surely be followed, even abroad if necessary.”

15. This should not be read as saying that a risk will only exist if the aggressor clan has government connections. As is clear from the recent guidance in *BF*, it is word of mouth, rather than the civil registration database, which is the most likely route for persecutors to trace their victims in most cases.
16. The real issue will be whether the aggressor clan has the motivation to continue the food and trace the victim in another part of Albania. That is quintessentially a fact-sensitive question to be determined on the evidence at the appeal hearing – it is not a proper basis for certification.
17. As such, lawyers should be routinely challenging every certification of a blood feud case.
18. The guidelines above will also be relevant more widely in cases that do not directly involve blood feud, but that involve, for instance, violence by criminal gangs or political enemies. In such cases, *EH* can be relied upon by analogy to say that the state does not consistently provide protection to those at risk of criminal violence, and *AM and BM* and *BF* can be relied upon to say that a determined persecutor can easily trace their victim elsewhere in Albania. Accordingly, lawyers should be challenging certifications in Albanian cases.

Blood feuds and credibility

19. Among those Albanian asylum claimants who do receive an appealable decision, it is common to see refusals based on credibility, both at first instance and on appeal. Most of the time, these refusals are based on incorrect assumptions. Lawyers should be robustly challenging these refusals on appeal. In the case of claimants who have already lost their appeal, lawyers should be taking them on to make further submissions.
20. Often, judges and Home Office decision-makers challenge a claimant's credibility on the basis of internal inconsistencies in the account. In this regard, lawyers need to be aware that mental health problems, particularly post-traumatic stress disorder and depression, are extremely common among asylum-seekers – especially among those who have been unaccompanied asylum-seeking children (UASCs) – and that these can often be the real reason for apparent confusion in an account.

21. Lawyers should be aware that not every asylum-seeker with mental health problems will have sought medical help or raised the issue of their own volition. Many people suffer in silence and do not bring their symptoms to their lawyer's attention. As such, lawyers should never assume that their client is mentally healthy simply because they have not yet disclosed any mental health problems. In some cases it can be useful to use an online PTSD and depression screening tool, to get a sense of whether a referral to a psychiatrist or a clinical psychologist for an expert report is merited.
22. A psychiatric or psychological report can be a great boon to an asylum case where credibility is in issue. Mental health problems such as PTSD and depression can often provide a complete explanation for internal inconsistencies, vagueness and/or confusion in the account. This is for the following reasons:
1. The UNHCR highlights that *"psychological research has consistently shown that memories of even the most important, traumatic, or recent life events can be difficult to retrieve and recall with any accuracy. Inconsistency, loss of detail, and gaps in recall are a natural phenomenon of the way a person records, stores, and retrieves memories."*² Cameron (2010) has summarised a large amount of research on memory. She explains that our memory for temporal information is poor; when we remember an autobiographical event, our ability to assign a date to it is nearly always based on inference, estimation and guesswork. This is true even for unusual and/or memorable personal events. She explains that our memory for the sequences of events is likewise poor; we often have difficulty recalling the order of the components of the autobiographical events. She also explains that when we experience repeated similar events, afterwards we may not only have trouble estimating their frequency; as a large body of research has shown conclusively, we typically lose the ability to remember individual instances clearly, if at all. Rather than remembering each individual cold that we have suffered, or each visit to the doctor, our memories for these similar events typically merge and are replaced by 'generic memories for classes of similar events', such as a typical cold or visit to the doctor.³

² UNHCR, "Beyond Proof: Credibility Assessment in EU Asylum Systems," May 2013

³ Cameron, H. E. (2010), "Refugee status determinations and the limits of memory," 22(4) *International Journal of Refugee Law* 469-511

2. Traumatic memories are different from normal memories. Herlihy and Turner (2013) explain: *“When recounting a normal event, we are able voluntarily to retrieve a verbal narrative, with a beginning, middle and end, and a sense of being in the past. This narrative is updateable, as described above, should new information become available. However, traumatic memory has some quite different attributes. This is a sensory ‘snapshot’ of the traumatic moment – perhaps just the sound of screams, the image of a face, or a feeling of pain; it is without narrative structure and, crucially, does not have a sense of being in the past but is ‘re-experienced’, as if it were happening in the present... They are not voluntary, as normal memories, but triggered, by internal or external cues (such as the sight of someone in uniform, a pain, or a feeling of guilt).”*⁴ Thus, decision-makers should not expect asylum-seekers’ accounts of traumatic events to be recalled and recounted in the same way as ordinary, non-traumatic memories. Following traumatic experiences ‘verbally accessible’ memories may be accessible, but ‘situationally accessible’ memories, which are the result of ‘nonconscious’ processing during a traumatic event are not subject to the same degree of conscious retrieval and control and instead may automatically be accessed in the form of intrusive thoughts and flashbacks in contexts or environments with similarities to the traumatic situation.⁵

3. Where a person has PTSD and/or depression, it can impact their memory even in areas not directly related to the trauma. Overgeneral memory is associated with PTSD and depression, and this can impair the ability to recount specific autobiographical memories. PTSD can result in particular difficulties with recalling contextual details of traumatic situations.⁶ Herlihy and Turner (2013) explain that *“when people are depressed, they give more overgeneral memories. The phenomenon has also been shown to be associated with PTSD. There are suggestions that there is also a cultural element to overgeneral memory, most of the studies in the literature having been conducted with participants of Western culture.”*⁷ In a subsequent study,

⁴ Herlihy, J. & Turner, S. (2013), “What do we know so far about emotion and refugee law?” *Northern Ireland Legal Quarterly*, 64(1) 47–62

⁵ Brewin CR, Dalgleish T and Joseph S (1996) A dual representation theory of posttraumatic stress disorder. *Psychological Review*, 103, 670-686

⁶ Flor H, Nees F (2014) Learning, memory and brain plasticity in posttraumatic stress disorder: Context matters. *Restorative Neurology and Neuroscience*. 32, 95-102.

⁷ Ibid.

Graham, Herlihy and Brewin (2014) explain that “[a]utobiographical memory specificity (AMS) refers to the ability to recall specific memories, commonly defined as lasting less than one day, and overgeneral memory (OGM) refers to the tendency to recall general memories, either categories of events that happened repeatedly or events that lasted a long time.”⁸ Their study found that “asylum seekers and refugees with PTSD and depression are less able to retrieve specific memories of their personal past within a given time limit when prompted to do so.”⁹ Thus, an asylum-seeker under the pressure of an interview may have problems with recalling specific memories. Notably, this applies not just to memories of the traumatic events themselves but to autobiographical memory generally.

4. Depression and PTSD can also affect a person’s ability to cope with the interview process and with direct interviewing, particularly where this is adversarial.¹⁰ Herlihy and Turner (2013) explain that “feelings of worthlessness can lower a person’s confidence in their memory and knowledge, leaving them appearing unsure – and hence not credible. Similarly, poor concentration, or simply not having slept for more than a few hours together for many months, can make a person poorly equipped for lengthy, detailed interviews about their present and past circumstances.”¹¹ People who have experienced sexual trauma often have particular difficulty recounting it accurately and consistently and research shows this is also the case in Home Office interviews.¹²

5. Evidence confirms that internal consistency is not a particularly useful heuristic in determining credibility. Cameron (2010) states “when it comes to assessing credibility, police officers, prosecutors and judges, as well as lay

⁸ Graham, B., Herlihy, J. & Brewin, C. (2014). Overgeneral memory in asylum seekers and refugees. *Journal of Behavior Therapy and Experimental Psychiatry* 45 375-380

⁹ Ibid.

¹⁰ Cohen J (2001) Errors of recall and credibility: can omissions and discrepancies in successive statements reasonably be said to undermine credibility of testimony? *Medico-legal Journal* 69 (1), 25-34 and Herlihy J and Turner SW (2007) Asylum claims and memory of trauma: sharing our knowledge. *British Journal of Psychiatry* 191, 3-4

¹¹ Herlihy, J. & Turner, S. (2013), “What do we know so far about emotion and refugee law?” *Northern Ireland Legal Quarterly*, 64(1) 47–62

¹² Hook A and Andrews B (2005) The relationship of non-disclosure in therapy to shame and depression. *British Journal of Clinical Psychology* 44, 425-438; also Bogner D, Herlihy J and Brewin CR (2007) Impact of sexual violence on disclosure during Home Office interviews. *British Journal of Psychiatry* 191, 75-81.

people, have 'hit rates just above the level of chance'... one of the commonly proposed explanations for this low success rate is that professional lie detectors and lay people alike tend to rely on the 'consistency heuristic' – the notion that 'consistency implies truth, whereas inconsistency implies deception'. In fact, it has now been clearly demonstrated in study upon study that truthful and deceptive accounts are 'equally consistent over time', most likely because 'liars try to remember what they have said in previous interrogations, while truth-tellers try to remember what they have actually experienced'. Contrary to popular belief, these tasks are equally challenging... [A]ll memories are reconstructions, and certain kinds of information are not easily reconstructed... [O]ver time a person's memory, and hence her story, may change and may change significantly, owing to a number of well-documented memory effects. Some memories fade or become distorted while others get stronger. Loss and gain of information is 'typical of how memory works.'" [8] This is particularly important where a person is suffering from PTSD and/or depression. Herlihy and Turner (2013) summarise multiple studies which have shown that inconsistencies do arise across repeated interviews in the genuine accounts of victims of trauma.¹³

6. Consistency in interviews and appeal hearings can be even more difficult for asylum-seekers who are children, or who were children when they first claimed asylum or experienced persecution. There are significant differences between children's and adults' autobiographical memories. The UNHCR publication 'The Heart of the Matter' explains "*The ability to provide a coherent account develops rapidly between approximately 12 and 16 years of age, along with brain development, but does not fully mature until around 20 years... [Y]oung adolescents typically provide narratives with factual content and action statements but with less orientation in time and place, and fewer interpretations or explanations, than older adolescents.*"¹⁴

7. Childhood trauma can have particular effects on memory. Generally, retrieval of emotion-based memories is difficult for adolescents, and research indicates this is even more so in traumatised and depressed adolescents. Depression can also significantly affect a young person's account of their

¹³ Cameron, H. E. (2010), "Refugee status determinations and the limits of memory," 22(4) *International Journal of Refugee Law* 469-511

¹⁴ UNHCR and European Refugee Fund, "The Heart of the Matter: Assessing Credibility when Children Apply for Asylum in the European Union," December 2014

autobiographical memories. Early exposure to trauma, abuse and neglect is also linked with overgeneral autobiographical memories, and adolescents with a history of childhood abuse or neglect have less specific autobiographical memories.¹⁵

23. A further common cause of inconsistencies in an account is interpreter error. It is common for interpreters, even skilled ones, to make mistakes – and since most asylum claimants do not speak English when they first arrive, and do not normally have their own independent interpreter at their screening interview or asylum interview, this is a common source of errors. Where there is an audio recording of the substantive interview, it is often very useful to listen to parts of the recording with an independent interpreter and to ask them to re-translate parts that have not been translated properly.

24. Another common trope in refusal letters and determinations is that a claimant's account is "implausible" or "externally inconsistent". In many cases, this is based on misunderstanding or ignoring the country evidence. To take some common examples:

- a. Decision-makers sometimes assert that it is implausible that the claimant, or another member of their family, was not targeted by the aggressor clan on a particular occasion. Sometimes this is because the decision-maker does not understand the rules of the Kanun. For example, the Kanun traditionally forbids targeting women, boys under 15/16, and clergy. The Kanun is generally patrilineal (see *EH* at [15], [25] and [37]), so members of the family who are not part of the patrilineage, such as one's mother's relatives, may not have been targeted. Multiple sources also confirm that the Kanun traditionally forbids targeting a person in their own home,¹⁶ which is

¹⁵ Given-Wilson, Z., Herlihy, J. & Hodes, M. (2016). "Telling the story: A psychological review on assessing adolescents' asylum claims," *Canadian Psychology/Psychologie canadienne*, Vol 57(4), Nov 2016, 265-273

¹⁶ For instance, an academic article on blood feud confirms that one's home is "considered inviolate under Kanun": Cara, A. and Margjeka, M. (2015) "Kanun of Lek Dukagjini Customary Law of Northern Albania," *European Scientific Journal* October 2015 edition vol.11, No.28 1857 – 7881.

Similarly, an Immigration and Refugee Board of Canada response concerning blood feuds among ethnic Albanians confirms that "[t]he rules surrounding blood feuds dictate that it is forbidden to kill someone in their home, so some men become isolated in their homes in order to avoid the danger." Immigration and Refugee Board of Canada, "Serbia: Blood feuds carried out by ethnic Albanians; state protection and support services available to victims of blood feuds; instances of prosecution for blood-feud related crimes (2012-March 2014)," 2 April 2014. <https://www.refworld.org/docid/538c43a54.html> Although this IRB Response is about ethnic Albanians in Serbia, it is clear from the surrounding context that this comment relates to ethnic Albanian

consistent with the recognition in *EH* at [5(ix)] that “[a] self-confined person will not usually be at risk in their home, although that is not completely certain.”

- b. Conversely, sometimes decision-makers make the opposite error – they assert that it is implausible that the claimant, or another member of their family, was targeted by the aggressor clan in circumstances where the rules of the Kanun would have forbidden it. This is also a misconception. The country evidence – including that contained in the Home Office’s own February 2020 CPIN – makes clear that the rules of the Kanun are not always followed today and that women, children and clergy are now sometimes targeted.¹⁷ In short, the rules of the Kanun are sometimes followed and sometimes not – and decision-makers should not draw any adverse inferences as to credibility in either direction.
- c. Decision-makers may also assume that self-confinement has to be total, and that it is implausible that a self-confined person would have been able to leave the house at any time for any reason. This is not the case. Again, the Home Office’s own February 2020 CPIN makes clear that some families are semi-isolated and come out of their houses occasionally or even regularly.¹⁸

cultural traditions generally. The same comment is reproduced in another IRB Canada response concerning ethnic Albanians in Kosovo: Immigration and Refugee Board of Canada, “Kosovo: “Blood feuds and availability of state protection (2010-September 2013),” 10 October 2013
<https://www.refworld.org/docid/527b53c44.html>

¹⁷ See the February 2020 CPIN at 3.3.1, quoting a Belgian Commissioner-General for Refugees and Stateless Persons (CEDOCA) report:

“Elsa Ballauri from the Albanian Human Rights Group (AHRG) also referred to the transformation of blood feud: [...] She pointed out that nowadays, people are killing even women and children for blood feud, which is not in accordance to the stipulations of the Kanun. [...]”

And at paragraph 3.3.5, quoting a report by Operazione Colomba:

“Culturally, the practice of vendetta is moving away from tradition to develop new forms that, because they arise from new situations, no longer have any connection with the traditional code since they are creating new sociocultural meanings for gjakmarrja. The following examples show how blood feud has changed in practice... Secondly, the Kanun of Lek Dukagjini excludes religious authorities, women and children under 15 from gjakmarrja. In the last few years, women, children and religious authorities have been the victims of blood feud violence.”

¹⁸ See the February 2020 CPIN at paragraph 4.1.1:

25. In some cases, expert evidence can be very helpful in contextualising the assessment of credibility. Although the assessment of credibility is for the decision-maker, an expert report can offer *“a factual context in which it may be necessary for the fact-finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them,”* Mibanga [2005] EWCA Civ 367. As the Court of Appeal held in *HK (Sierra Leone)* [2006] EWCA Civ 1037, *“in many asylum cases, some, even most, of the appellant's story may seem inherently unlikely but that does not mean that it is untrue. The ingredients of the story, and the story as a whole, have to be considered against the available country evidence and reliable expert evidence, and other familiar factors, such as consistency with what the appellant has said before, and with other factual evidence (where there is any).”*
26. Finally, refusals often incorporate material obtained by the UK authorities (arguably in breach of Article 22 of the Procedures Directive) from the Albanian Ministry of the Interior or the Borders and Migration Department. Sometimes this will assert, for instance, that checks have been carried out and that a family is not in blood feud. This evidence normally consists of a couple of lines in a pro forma, with no information about how these checks were carried out or where the information was obtained.
27. This evidence should, in many cases, be accorded little weight by the Tribunal. As the Tribunal stated in *AAW (expert evidence-weight)* [2015] UKUT 673 (IAC) at [40], *“the assessment of the reliability of a source is a task for the Tribunal and not for a witness offering evidence to it and, if the sources are not revealed, and not even the notes kept of any conversations with those sources are produced, it is hard to see that very much weight can be afforded to views founded upon information provided by such sources.”* This principle applies as much to Home Office evidence as to appellants' expert reports. Here the method of obtaining the information and the sources relied on by the authorities are entirely opaque.
28. Similarly, the Tribunal stated in *CM (EM country guidance; disclosure) Zimbabwe CG* [2013] UKUT 59 (IAC), in relation to evidence in a Home Office Fact Finding Mission report: *“Anonymous material is not infrequently relied on by appellants as*

“Self-confinement is often referred to as a possible characteristic of contemporary blood feud cases. However, the Albanian State Police makes a clear distinction between blood feud affected families who are confined and those who are not confined. It seems that there are also blood feud affected families who are semi-isolated, which means they come out of their houses occasionally or even regularly.”

indicative of deteriorating conditions or general risk. The Tribunal should be free to accept such material but will do its best to evaluate by reference to what if anything is known about the source, the circumstances in which information was given and the overall context of the issues it relates to and the rest of the evidence available... The problem is not one of admissibility of such material as forming part of the background data from which risk assessments are made, but the weight to be attached to such data. It is common sense and common justice that the less that is known about a source and its means of acquiring information, the more hesitant should a Tribunal judge be to afford anonymous unsupported assessment substantial weight, particularly where it conflicts with assessment from sources known to be reliable.” This, like AAW, reflects a common-sense principle: if the Tribunal is to accept evidence gathered by a third party from anonymous sources, it needs to have sufficient information about the method by which the evidence was gathered to make its own assessment of whether the evidence is reliable.

29. Lawyers should also remember that Albanian communities can and do conceal the existence of blood feuds from the authorities – as attested in multiple sources.¹⁹

¹⁹ CEDOCA, “Blood feuds in contemporary Albania,” 29 June 2017 at pages 23-24:

“...blood feuds in contemporary Albania are often not reported to the authorities by the persons who are involved and to the observation that these persons don’t report consciously: According to the Office of the Prosecutor, blood feud affected families generally refuse to denounce, collaborate or to give information. A representative from the Prosecutor’s General Office in Tirana even stated that there is “a problem of denunciation”... A representative of the OSCE stated that the functioning of the authorities is less problematic nowadays, but what is more problematic is the fact that blood feud cases are not reported, that they remain hidden...

“One of the most cited reasons seems to be that it is part of the traditional mentality, that it is a cultural issue to keep away private conflicts out of sight of the authorities... A second reason that is given for the latency of the phenomenon is that there remains a general distrust of the authorities based on what has happened in the past...

“Another reason why people do not report a blood feud case to the authorities is that they fear to be prosecuted themselves. Liljana Luani stated that “they don’t go to the police because they might be sentenced themselves.” A representative of an international organization in Tirana stated that people sometimes do not go to the police because they have done something unlawfully themselves.” This was confirmed by Mirela Arqimandriti, head of the Tirana based Gender Alliance for Development Center (GADC), who stated that sometimes people do not go to court to file a case because they have done something wrong themselves. They may want to keep the police out of their drugs business or property issues.”

Operazione Colomba, “Descriptive document on the phenomenon of “hakmarrja’ and ‘gjakmarrja’,” December 2017 at page 17:

“5. The lack of collaboration and the code of silence practised by the local population do not help the police with their investigations. Silence for reasons of self-interest, or more usually for fear of reprisals, slows the course of justice and prevents the reporting of vendettas.”

30. Accordingly, lawyers should not be intimidated when faced with a catalogue of adverse credibility findings. Most of these, on analysis, are actually weak arguments that can be overcome on appeal, or in a fresh claim.

Domestic violence and trafficking

31. Many other asylum claims concern domestic violence and/or trafficking. The country guidance cases on trafficking of women, *AM and BM* and *TD and AD* (cited above), are relatively favourable to appellants. But there continues to be a gap in many decision-makers' and lawyers' understanding as regards claims based on domestic violence where there is no history of trafficking. In that regard, it is important to understand that many victims of domestic violence – of all genders – will be in an exceptionally vulnerable position in Albania and will be at exceptionally high risk of trafficking, exploitation and abuse on return, even if they have not been trafficked in the past.
32. Many decision-makers and lawyers assume that asylum claims based on domestic violence alone are lacking in merit, because of the now-elderly country guidance case of *DM (Sufficiency of Protection, PSG, Women, Domestic Violence) Albania CG* [2004] UKIAT 00059. *DM* addresses the situation of a woman who feared violence at the hands of her ex-boyfriend, and concludes that there would be a sufficiency of protection in such a case. No experts gave live evidence, and the only country evidence referred to is the October 2003 Country Information and Policy Unit (CIPU) report published by the Home Office.
33. That situation cannot necessarily be equated with that of a person who faces violence at the hands of their own family. Albania has a traditional patriarchal culture based on notions of family honour, as clearly set out in Dr Schwandner-Sievers' evidence in *AM and BM* at [59]-[60]. At [182] in *AM and BM* the Tribunal accepted, in respect of women who had been trafficked and faced reprisals from their own families, that "[i]f the victim is at real risk of persecution from her family or her "husband" then there is little evidence that the State would intervene, particularly in the north of the country." Thus *DM* cannot be taken to exclude the possibility that a person who is at risk from their own family, having been perceived to violate the norms of family honour, would not be sufficiently protected by the state in their home community. The onus would then shift to whether internal relocation would be both safe and reasonable.

34. This should not be seen as a problem only faced by women. Many Albanian victims of domestic violence are boys, typically at the hands of their fathers. Lawyers should familiarise themselves with the long, but critically important, Asylos and Asylum Research Centre report published in May 2019 on trafficking of boys and young men. I summarised and analysed this report in June 2019:

<https://www.gardencourtchambers.co.uk/news/albanian-boys-and-young-men-the-risk-of-trafficking-and-re-trafficking-on-return> In that piece, I argue that the

Asylos/ARC report provides strong evidence that boys and young men who have not been trafficked in the past, but who come from poor backgrounds, are victims of domestic violence and/or sexual abuse, lack family support, have limited education, and/or have mental and/or physical health problems, may well be at elevated risk of trafficking on return to Albania and that this should be recognised as potentially giving rise to an asylum claim.

35. Lawyers should recognise, therefore, that:

- a. A domestic violence victim may be at risk from their family in their home area, and may not have a sufficiency of protection against that risk. This is not necessarily limited to northern areas of the country (see *TD and AD* at [111], cited above).
- b. In terms of internal relocation, a victim may be at risk of being traced by their own family (see *AM and BM* at [186]-[187] and *BF* at [181], cited above). Internal relocation may also be unreasonable/unduly harsh, because many victims of domestic violence will be in an exceptionally vulnerable position – particularly if they come from poor backgrounds, are victims of domestic violence and/or sexual abuse, have limited education, lack family support, and/or have mental and/or physical health problems – and may be at risk of being trafficked or exploited, even if this has not happened to them in the past.

36. Expert evidence is likely to be very helpful on these issues. Lawyers should recognise the potential merit in domestic violence-based asylum claims – including those by men and boys – and should pursue these claims.