

## Working with Albanian asylum-seeking children and young people: A short guide for lawyers

*David Neale, Garden Court Chambers*

*Xhoana and Kristjan, Shpresa Programme*

This is a collaborative document prepared by David Neale of Garden Court Chambers and young people at Shpresa Programme. It is intended to provide guidance on key issues for lawyers working with Albanian asylum-seeking children and young people. It will address four key areas:

- First, the relevance of mental health to children's and young people's asylum claims, and the need for lawyers to understand mental health.
- Second, the problems that interpretation errors can cause for children and young people, and the need for lawyers to address this.
- Third, the need to dispel the misconception that Albania is a "safe" country.
- Fourth, the need for lawyers to see the child or young person in front of them, and to recognise their needs as a child or young person.

### **Mental health**

Asylum-seeking children and young people have had the distressing experience of fleeing their country and their home at a young age. Many have experienced severe childhood trauma, such as domestic violence, neglect, sexual violence and trafficking. Asylum-seeking children and young people have a heightened risk of developing mental health problems.<sup>1</sup> This may, for example, include post-traumatic stress disorder (PTSD) and depression.

A child or young person's mental health can affect their experiences of the asylum process in many ways:<sup>2</sup>

- First, it is important to understand that traumatic memories are not recalled in the same way as normal memories. They are not recalled as a linear narrative, and may be triggered by internal or external cues rather than being voluntary.<sup>3</sup>
- Second, it is inherently difficult to recall temporal information, such as the date an event happened, the order events happened in, how long an event took or how many

---

<sup>1</sup> Z Given-Wilson, J Herlihy and M Hodes (2016) "Telling the story: A psychological review on assessing adolescents' asylum claims," 57 *Canadian Psychology/Psychologie canadienne* 4, 265-273  
<http://cseel.mangoonline.co.uk/wp-content/uploads/2019/07/Given-Wilson-Herlihy-Hodes-2016.pdf>

<sup>2</sup> See generally D Neale and J Blair, "Bridging a Protection Gap: Disability and the Refugee Convention," April 2021 at pp 38-43 <https://www.helenbamber.org/sites/default/files/2021-04/Bridging%20a%20Protection%20Gap%20-%20Disability%20and%20the%20Refugee%20Convention.pdf>

<sup>3</sup> J Herlihy and S Turner (2013) "What do we know so far about emotion and refugee law?", 64 *Northern Ireland Legal Quarterly* 1, 47-62 <http://www.csel.org.uk/assets/images/resources/herlihy-turner-2013-nilq/NILQ-64.1.3-HERLIHY-AND-TURNER.pdf>

times an event happened,<sup>4</sup> and this is even more difficult for children and young people whose memories are not fully developed.<sup>5</sup> These difficulties are compounded in people with PTSD and depression. PTSD and depression are associated with “overgeneral memory”, which makes it more difficult to remember specific events in one’s past.<sup>6</sup> This does not just affect memories of the traumatic events, but affects memory generally. Early exposure to trauma, neglect and abuse is particularly associated with overgeneral memory in children and young people.<sup>7</sup>

- Third, childhood trauma can make it difficult for a child or young person to trust others. For example, if a child or young person has been harmed by their family, by traffickers or by people in authority, they can find it very hard to trust adults.<sup>8</sup> This can explain why a child or young person might not disclose everything that has happened to them.
- Fourth, going through the asylum process can be extremely re-traumatising. For a child or young person who has experienced traumatic events, having to tell their story again and again to different people is distressing.

The Home Office often accuses children or young people of lying because their account is “inconsistent”, for example because they muddled up the dates, sequences and durations of events, or because they did not tell their whole story at their interview. But these “inconsistencies” can often be explained by the child or young person’s mental health. The relevance of mental health conditions to explaining inconsistencies has been recognised by the courts.<sup>9</sup>

It is important to understand that children and young people will not always tell their lawyer that they are suffering from mental health problems. Mental health is a taboo subject in Albanian society and mental health conditions are stigmatised, and the same is true in many other countries and cultures. Many children and young people will not even recognise that they are suffering from mental health problems. It is important for lawyers to be alert to signs of PTSD and depression, such as low mood, insomnia, nightmares, irritability, and difficulty trusting others. Do not assume that a child or young person is “fine” simply because they have not disclosed how they are feeling.

Where a child or young person is suffering from mental health problems, it is essential to get a high-quality medico-legal report. This can be relevant in multiple ways. First, it can explain inconsistencies in their account. Second, it can provide independent corroboration of their account, if their mental health symptoms are found to be objectively consistent with their

---

<sup>4</sup> HE Cameron (2010) “Refugee status determinations and the limits of memory”, 22 *International Journal of Refugee Law* 4, 469-511

<sup>5</sup> UNHCR, “The Heart of the Matter,” December 2014, p 66 <https://www.refworld.org/pdfid/55014f434.pdf>

<sup>6</sup> Herlihy and Turner, op. cit.; Graham, B., Herlihy, J. & Brewin, C. (2014), “Overgeneral memory in asylum seekers and refugees,” *Journal of Behavior Therapy and Experimental Psychiatry* 45, 375-380 <http://csei.org.uk/assets/images/resources/graham-herlihy-brewin-2014-jbtep/graham-herlihy-brewin-overgeneral-memory.pdf>

<sup>7</sup> Given-Wilson, Herlihy and Hodes, op. cit.

<sup>8</sup> UNHCR, op. cit. pp 63-64

<sup>9</sup> *AM (Afghanistan)* [2017] EWCA Civ 1123 at [21(d)]; *JL (medical reports-credibility) China* [2013] UKUT 145 (IAC) at [26]-[27]; and *MN and IXU* [2020] EWCA Civ 1746 at [125]-[128]

reported history.<sup>10</sup> Third, it can be relevant to the risks the child or young person would face on return (for instance, risks of re-trafficking), and/or to whether they would be able to find work and meet their needs if they relocated internally.

A letter from a child or young person's treating clinician is not an adequate substitute for a medico-legal report. It is essential to get a report from a clinician who has experience of writing medico-legal reports and is familiar with what the Tribunal expects. However, treating clinicians can often provide valuable supporting evidence.

It is also very important to take the time to build a relationship of trust with a traumatised child or young person. Do not assume that it will be possible to get the child or young person's full story in one appointment. Often, it will take several appointments before they are able to disclose everything that has happened to them.

### **Interpreters**

Interpreters can often cause significant problems for asylum-seeking children and young people. When a child or young person first comes to the UK, they are unlikely to speak fluent English and will be reliant on the help of interpreters. However, interpretation is not an exact science. Often, interpreters do not literally translate word-for-word everything a client says. Sometimes the interpreter's own assumptions will unconsciously affect their translation. Sometimes an interpreter will translate something in a way that carries different connotations to those the client intended. Sometimes an interpreter will speak a different dialect from the client (for example, an Albanian interpreter from Kosovo assisting an Albanian client from Albania). And in a few cases there have been instances of misconduct by interpreters, such as giving asylum-seekers "advice" on what to say. These problems can arise with Home Office interpreters, Tribunal interpreters, and interpreters hired by solicitors' firms.

Often, a child or young person who is new to the country will be frightened to speak up and correct the interpreter, or to correct interpretation errors that have arisen in their interviews and witness statements. It is often difficult for a child or young person to challenge people in authority.

There are a few things lawyers can do to guard against this:

- Lawyers should always ensure that the Home Office is asked to record their client's asylum interview, and should always request a copy of the audio recording.<sup>11</sup> This is an important safeguard. Often, when relevant parts of the audio recording are re-translated by an independent interpreter, many of the supposed "inconsistencies" in an asylum-seeker's account are revealed simply to be interpretation errors. The fact that the lawyer has attended the interview in person does not mean that the audio recording is unnecessary.

---

<sup>10</sup> See *MN and IXU* [2020] EWCA Civ 1746; *KV (Sri Lanka)* [2019] UKSC 10

<sup>11</sup> Current Home Office practice is to record asylum interviews by default. See paragraph 339NE of the Immigration Rules, and Home Office, "Asylum interviews," 3 June 2021 at pp 26-28

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/991608/asylum-interviews-v8.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991608/asylum-interviews-v8.0ext.pdf)

- Lawyers should always take the time to read back the screening interview and asylum interview records to the child or young person, as well as any witness statements taken by previous lawyers. They should assure the young person that if there are any mistakes, they should speak up, and that if the interpreter got it wrong they should not be afraid to say so.
- Wherever possible, lawyers should ensure that an independent interpreter attends a child or young person’s asylum appeal hearing, so that they can point out any translation errors by the Tribunal interpreter.

### **Albania is not a “safe” country**

Many judges and lawyers wrongly assume that Albania is a “safe” country of return. Some are influenced by the fact that Albania is in Europe, and some think of it as a tourist destination rather than a dangerous country.

The Home Office and the Albanian government have a shared interest in portraying Albania as a safe country: the Home Office wants to return asylum-seekers there, and Albania wants to improve its international image and its prospects of joining the European Union. There is often close collaboration between the Home Office and the Albanian government. In many cases the Home Office will carry out background checks on an asylum-seeking child or young person via the British Embassy in Tirana, and will rely on information obtained through this route to discredit a child or young person.

But lawyers should not be fooled by the misleading claims of the Home Office and the Albanian government. Albania is in fact a country rife with serious risks:

- Human trafficking is prevalent in Albania. Many Albanian children and young people – boys and young men as well as girls and women – are trafficked for forced labour or forced criminality. Many criminal gangs have an international reach, with operations in neighbouring countries. It is clear from Tribunal Country Guidance that some trafficking victims will be at risk of re-trafficking and will be inadequately protected by the state on return: relevant factors include the social status and economic standing of the victim’s family, the level of education of the victim and their family, the victim’s state of health (particularly mental health), the presence of an illegitimate child, the area of origin, age, and what support network will be available.<sup>12</sup> Although this Country Guidance relates to women and girls, the Home Office has accepted that similar risk factors apply to boys and young men.<sup>13</sup> Research by Asylos and Asylum Research Centre has shown that risk factors for boys and young men include coming from an unstable or abusive family background, poverty and economic vulnerabilities, limited education, patriarchal attitudes in which young men are expected to be

---

<sup>12</sup> *TD and AD (Trafficked women) CG* [2016] UKUT 92 (IAC)

<sup>13</sup> Home Office Country Policy and Information Note, “Albania: Human trafficking” (version 10.0, February 2021) at para 2.4.21

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1026093/ALB\\_CPIN\\_Human\\_trafficking\\_002.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1026093/ALB_CPIN_Human_trafficking_002.pdf)

providers for their families, and having physical and mental disabilities.<sup>14</sup> Many Albanian asylum-seeking children and young people display all these vulnerabilities: they are from poor families, have no support network on return, have little education, and have mental and/or physical health problems.

- Blood feuds also continue to occur in Albania, particularly but not exclusively in the north of Albania. Tribunal Country Guidance accepts that the Albanian state does not in general provide a sufficiency of protection against an active blood feud,<sup>15</sup> and despite the Home Office's attempts to claim otherwise, this remains the true position today.<sup>16</sup> These risks may also be relevant to children and young people who are not in a blood feud but who are at risk of violent reprisals from criminal gangs, for example because of a debt owed by their family.
- Many Albanian children and young people – boys and young men as well as girls and women – have suffered domestic violence. Coming from an unstable and abusive family background is a major risk factor for trafficking. Although a very old Tribunal Country Guidance case suggests that there is a sufficiency of protection against domestic violence, this is not necessarily so in every case.
- It is not, in general, possible to avoid persecution in Albania by relocating internally. Tribunal Country Guidance<sup>17</sup> and country background evidence<sup>18</sup> show that it is easy to track people down in Albania through word of mouth.

Many Albanian children and young people are at risk on return – and many have been granted refugee status. Lawyers should never assume that Albanian cases are inherently weaker than those of other nationalities, or that Albania is a “safe” country.

### **Seeing the child or young person in front of you**

Finally, it is important to remember that your client is a child or young person first, and an “asylum case” second. You should treat your client as you would want your own child to be treated. You should remember that children think differently from adults. You should never assume that a child or young person is “resilient” because they have left their country of origin. You should think not only about your client's asylum case, but about whether their other needs as a child or young person are being met – such as education, health care, accommodation and social support. Where appropriate (with the child or young person's

---

<sup>14</sup> Asylos and Asylum Research Centre, “Albania: Trafficked boys and young men” at pp 20-34 <https://www.asylos.eu/Handlers/Download.ashx?IDMF=b49e66a6-a777-47da-90f7-b2fcc14946fa> See D Neale, “Albanian boys and young men: the risk of trafficking and re-trafficking on return,” 11 June 2019 <https://www.gardencourtchambers.co.uk/news/albanian-boys-and-young-men-the-risk-of-trafficking-and-re-trafficking-on-return>

<sup>15</sup> *EH (blood feuds) Albania CG* [2012] UKUT 348 (IAC)

<sup>16</sup> Although successive Home Office Country Policy and Information Notes (CPINs) have claimed that there is now a sufficiency of protection against blood feuds, this assertion is not justified by the evidence. See D Neale, “Albanian blood feuds and certification: a critical view,” 4 April 2019 <https://www.gardencourtchambers.co.uk/news/albanian-blood-feuds-and-certification-a-critical-view> and D Neale, “Albanian blood feuds: an update,” 16 April 2020 <https://www.gardencourtchambers.co.uk/news/albanian-blood-feuds-an-update>

<sup>17</sup> *AM and BM (Trafficked women) Albania CG* [2010] UKUT 80 (IAC) at [186]-[187]

<sup>18</sup> See the evidence of Stephanie Schwandner-Sievers, Asylos and ARC Foundation, op. cit., pp 159-160.

consent) you should work with community groups and support workers who can help you build a trusting relationship with your client.