

ILLEGAL MIGRATION BILL
BRIEFING¹ ON AMENDMENT 128A TO CLAUSE 57(3)
COMMITTEE STAGE – HOUSE OF LORDS

Introduction

The Illegal Migration Bill would add Albania to a list of safe countries whose citizens can be returned home without any consideration of their asylum or human rights claim, regardless of whether they are subject to the asylum ban. UNHCR has stated:

“UNHCR is concerned that the list includes Albania, despite UK published country guidance and decisions of UK courts which recognize that certain groups of Albanian citizens may be at risk of persecution.”²

DESIGNATION OF ALBANIA AS A SAFE COUNTRY – CLAUSE 57(3)

Proposed amendment:

In clause 57 (3), page 59, line 4, leave out ‘(a) Albania,’

Purpose of the proposed amendment

To remove Albania from lists of countries in which it does not belong in terms of EU membership, nor as a ‘safe country’.

Key concerns

- a) Albania is manifestly not a safe country; and
- b) the designation is unnecessary given that asylum claims by Albanian nationals can already be certified as ‘without foundation’ where, following an individualised

¹ This briefing is prepared by the Migrant and Refugee Children's Legal Unit (MiCLU), based at Islington Law Centre (ILC). In partnership with Shpresa Programme, MiCLU runs the *Breaking the Chains Project*, a project working specifically with unaccompanied asylum-seeking children and young people from Albania.

² UNHCR Legal Observations on the Illegal Migration Bill 2 May 2023

consideration, they are considered to be ‘manifestly unfounded’ in accordance with s.94 of the Nationality, Immigration and Asylum Act 2002.

Albania is not a ‘safe country’

If our country was safe we would not come here.

Young Albanian asylum seeker

The addition of Albania to a list which is otherwise comprised of countries which are member states of the EU, the EEA or the European Single Market (i.e. Switzerland) is inappropriate and appears to breach the requirements contained in the IMB (amending the Nationality Immigration and Asylum Act 2002) itself for addition of a state to the list given that these stipulate that:

(3) The Secretary of State may add a State to the list only if satisfied that—

(a) there is in general in that State no serious risk of persecution of nationals of that State, and

(b) removal to that State of nationals of that State will not in 30 general contravene the United Kingdom’s obligations under the Human Rights Convention.

(4) In deciding whether the statements in subsection (3)(a) and (b) are true of a State, the Secretary of State—

(a) must have regard to all the circumstances of the State (including 35 its laws and how they are applied), and

(b) must have regard to information from any appropriate source (including member States and international organisations).

Country information indicates that Albania has significant and longstanding issues related to corruption, trafficking, blood feuds, discrimination and violence against the LGBTQI community, stigma and discrimination against the ethnic Roma and Egyptian communities, gang-related violence, and sexual and domestic violence that the Albanian government appears either unable or unwilling to resolve.

If it was a safe country, victims of trafficking and blood feuds would get support instead of crossing the channel or coming in lorries and taking all those risks.

Young Albanian asylum seeker

As such, victims cannot obtain redress within Albania, and where the issues listed above cause a threat to an individual’s life or fundamental wellbeing, they are compelled to flee and seek sanctuary abroad.

Individuals who are in a position of needing to flee Albania urgently are vulnerable to being preyed on by criminal gangs and as a result circumstances frequently arise where individuals become debt-bonded to the criminal gangs who claim they have to 'work' to repay the cost of their journey to the UK. Those individuals then become victims of trafficking. In all such cases, Albania is not safe for that individual and they are in need of international protection.

Recognition of refugee status for Albanian nationals claiming asylum in the UK

As set out above, the criteria for designating a state as a 'safe country' requires that *"there is in general in that State no serious risk of persecution of nationals of that State"*. The recognition rate for Albanian nationals claiming asylum in the UK indicates that this requirement is not met in relation to Albania.

During 2022 more than 700 Albanian nationals (over 60 of whom were unaccompanied children) were given protection status (refugee status or Humanitarian Protection) in the UK.

In addition 1,395 first-tier tribunal appeal determinations have been made so far (ie at the point the statistics released in March 2023 were collated) in relation to asylum applications made by Albanians from 2016 until 2021. Of those 1,395 appeal cases:

- 695 (50%) were allowed
- 700 (50%) were refused

Further and more detailed information about relevant asylum and trafficking statistics are available at <https://miclu.org/asylum-statistics-albania-as-a-safe-country> and <https://miclu.org/analysis-of-home-office-statistics-on-the-national-referral-mechanism-updated-march-2023>.

As such it is clear that Albania is not a 'safe state' as per the heading for s.80AA of the Nationality, Immigration and Asylum Act 2002, and that it cannot correctly be asserted that in general there is no risk of persecution of nationals in that state. Had the IMB been law at the time that those Albanian nationals had claimed asylum they would have been prevented from claiming asylum and would have been returned (or 'refouled') to Albania without any individualised consideration of the risk of persecution that they would face. Creating a real risk that they would experience serious harm, including death.

I think at the moment they are not listening because there are a lot of Albanians who have come here illegally and they are saying they are all criminals so this has changed the perspective of the people and it creates a lot of racism around, which I have experienced as well. Like when you say you are from Albania people distance from you. People have said I am a criminal and other words. It becomes hard for people to engage in society. Even people who have status.

Young Albanian asylum seeker

Basis of asylum claims by Albanian nationals

There are a range of reasons why Albanian nationals seek asylum in the UK. In relation to Albania, the Home Office has published five Country and Policy Information Notes (CPINs): on trafficking, blood feuds, sexual orientation and gender identity and expression, on domestic violence against women, and on actors of protection. CPINs contain factual research-based information regarding those grounds and also policy guidance for Home Office caseworkers processing cases. It is important to understand that the CPIN is not binding on Tribunal judges nor is it a statement of the law. It is merely a statement of the Home Office's position³.

Trafficking

It is accepted by the international community and the UK Home Office's own guidance to its caseworkers is that human trafficking is a significant problem within Albania⁴.

The UK's Country Guidance case law⁵ accepts that some trafficked girls and women are at risk of re-trafficking on return, and would not be adequately protected by the Albanian state. The key factors to take into account include the social status and economic standing of their family, their level of education, their state of health (particularly their mental health), the presence of an illegitimate child, their area of origin, their age, and the presence or absence of a support network. This conclusion was reached by the Upper Tribunal after considering the best available country evidence and expert evidence, and hearing live evidence from experts.

Although this relates to girls and women, similar risk factors apply to trafficked boys and men. This was established by comprehensive research conducted by Asylos and Asylum Research Centre (ARC) in 2019⁶ which identified that the risk factors for boys and young men include coming from an unstable or abusive family background, poverty, unemployment, lack of education, coming from a remote/rural area, having physical or mental disabilities, being LGBT, and being from an ethnic minority. This research also illustrated a significant lack of adequate protection for trafficked boys and men, including a lack of shelters and a failure to recognise many boys/men as trafficking victims.

It is clear from the current Home Office CPIN that the country guidance remains valid and that some trafficked girls and women will be at risk on return, depending on their

³ As the Tribunal highlighted in *MST and Others (national service – risk categories) Eritrea CG* [2016] UKUT 443 (IAC) at [8], “the Home Office has no legal competence to decide whether or not a UT country guidance case is to be followed or not... the production of “country guidance” is solely a matter for the Tribunal and the courts.”

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1105202/ALB_CPIN_Trafficking.pdf; <https://www.state.gov/reports/2022-trafficking-in-persons-report/albania/>

⁵ TD and AD (Trafficked women) (CG) [2016] UKUT 00092

⁶ Asylos report May 2019 – Albania: Trafficked boys and young men
[Download.ashx \(asylos.eu\)](https://www.asylos.eu/download.ashx)

individual circumstances. While the CPIN downplays the risks for boys and men, it is not justified in doing so⁷.

Blood feuds

Some Albanians seek protection abroad due to blood feuds. In traditional culture, blood feuds relate to the social obligation to kill an offender or a member of their family in order to salvage one's honour, originating from the country's traditional social code, the Canon of Lekë Dukagjini.

The risks to those involved in blood feuds are high: if an individual has committed a crime against another (this could be murder or disputes over land or property), the affected family will seek to harm or kill a member of the perpetrator's family to avenge their honour, and this usually (although not always) will be a young man.

UK case law accepts that the Albanian state may be unable to protect people at risk of persecution from blood feuds and that those forced into confinement (an effective 'house arrest' to protect from retaliatory murder) will normally qualify for Refugee Status. The Home Office CPIN on blood feuds has been updated twice in the last year and currently the policy guidance asserts that generally state protection is available, stating: "In general a person fearing an active blood feud is not likely to be at risk of persecution or serious harm. Whether they face such a risk will depend on their particular circumstances with the onus on the person to credibly evidence this."

Serious concerns have been raised about the quality of the Home Office guidance on blood feuds and the methodology used, resulting in "a partisan and inaccurate picture of the risks from blood feud in Albania" which "omits sources contained in the previous CPIN which directly undermine the new CPIN's argument."⁸

Sexual orientation and gender identity and expression

The Home Office CPIN acknowledges that "LGBTI persons form a particular social group (PSG) in Albania within the meaning of the Refugee Convention [...] The question to be addressed in each case is whether the particular person will face a real risk of persecution. [...] In general, the available information does not establish that LGBTI persons face a risk of persecution or serious harm from the state. The onus is on the person to demonstrate otherwise. Each case must, however, be considered on its facts."

It is our experience from within our caseload of children and young people seeking asylum in the UK, that individuals claiming asylum on the basis of a fear of persecution due to sexual orientation are able to make out a refugee claim on their individual circumstances. Those circumstances may include disability or health problems, having experienced trafficking or exploitation, or other personal characteristics which mean that there is an increased risk of persecution and no means to relocate internally with

⁷ Albanian trafficked boys and young men: a review of the December 2022 CPIN David Neale Garden Court Chambers - [Albania-trafficking-CPIN-response.pdf](https://miclu.org/assets/uploads/2023/02/Albania-trafficking-CPIN-response.pdf) (miclu.org); and Albanian trafficked boys and young men: an addendum review of the February 2023 CPIN David Neale Garden Court Chambers February 2023 - [Albania-trafficking-CPIN-addendum.pdf](https://miclu.org/assets/uploads/2023/02/Albania-trafficking-CPIN-addendum.pdf) (miclu.org)

⁸ <https://miclu.org/assets/uploads/2023/02/Albania-blood-feud-CPIN-review-February-2023.pdf>

Albania. This further underlines the importance of an individualised assessment of each case as made clear by the Home Office's own guidance.

Designation of Albania as a safe country is inappropriate and unnecessary

The addition of Albania to a list which is otherwise comprised of countries which are member states of the EU, the EEA or the European Single Market is inappropriate given that each of those countries will have been required to meet minimum standards for membership. Albania is merely an EU candidate country and has not been permitted to join the EU thus far indicating that it has not reached the required standards for membership. Albania does not hold membership of either of the other two European entities to which the remaining countries listed at s.80AA of the Nationality, Immigration and Asylum Act 2002 belong. Accordingly it cannot be said that Albania should be treated in law as having achieved equivalent standards of safety and human rights as the other countries listed.

Currently some non-EU citizens who are not automatically barred from the asylum system do, however, have no right of appeal if they refused asylum by the Home Office. This is because certain non-EU countries are presumed to be safe for asylum seekers to return to unless they can show otherwise. People from so-called "white list" countries do have their asylum claim considered but they have no right of appeal if the claim is deemed to be "clearly unfounded". Such a claim is said to be "certified". Albania is on the current "white list" of countries.

Given the information set out above about the extent to which Albania can, in reality, be described as a 'safe country', we have serious concerns about the validity of including Albanian nationals on the 'white list' at all. States should only be added if there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom's obligations under the Human Rights Convention (S94(5) Nationality, Immigration and Asylum Act 2002). However, the fact remains that the government already has legal provisions which allow it to prevent asylum claimants from Albania whose asylum claims are clearly unfounded from pursuing an appeal from within the UK. It is our strong view that those existing provisions are more than sufficient to address any concerns in relation to those individuals seeking asylum who may not have sufficiently strong grounds to do so.

Some people they don't get to choose to come here, they are forced to, and you don't feel welcomed at all, you don't feel like they are trying to make a change for you, and I wonder how they would feel if they were in the same situation - if they were having problems here in the UK and going to another country seeking help and being treated like that – being threatened by facing deportation, how would they feel? How would they feel if someone from their family, especially a young child, 14 or 15, was able to go to another country and not have a life...?

Young Albanian asylum seeker