



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

BF (Tirana - gay men) Albania [2019] UKUT 0093 (IAC)

**THE IMMIGRATION ACTS**

Heard at Field House  
On Tuesday 16 October to Thursday 18 October 2018  
and Tuesday 23 October 2018

Decision & Reasons Promulgated  
On 26 March 2019

**Before**

**UPPER TRIBUNAL JUDGE DAWSON  
UPPER TRIBUNAL JUDGE SMITH**

**Between**

**BF (ALBANIA)  
[ANONYMITY DIRECTION MADE]**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Chelvan and Ms J Smeaton, Counsel, instructed by SMA  
Solicitors for the Appellant

For the Respondent: Mr C Thomann, Counsel, instructed by Government Legal  
Department for the Respondent

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. It is appropriate to continue the order. 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.

### COUNTRY GUIDANCE

- (i) *Particular care must be exercised when assessing the risk of violence and the lack of sufficiency of protection for openly gay men whose home area is outside Tirana, given the evidence of openly gay men from outside Tirana encountering violence as a result of their sexuality. Such cases will turn on the particular evidence presented.*
- (ii) *Turning to the position in Tirana, in general, an openly gay man, by virtue of that fact alone, would not have an objectively well-founded fear of serious harm or persecution on return to Tirana.*
- (iii) *There is only very limited evidence that an individual would be traced to Tirana by operation of either the registration system or criminal checks at the airport. However, it is plausible that a person might be traced via family or other connections being made on enquiry in Tirana. Whether an openly gay man might be traced to Tirana by family members or others who would wish him harm is a question for determination on the evidence in each case depending on the motivation of the family and the extent of its hostility.*
- (iv) *There exists in Tirana a generally effective system of protection should an openly gay man face a risk of harm in that city or from elsewhere in Albania.*
- (v) *An openly gay man may face discrimination in Tirana, particularly in the areas of employment and healthcare. However, whether considered individually or cumulatively, in general the level of such discrimination is not sufficiently serious to amount to persecution. Discrimination on grounds of sexual orientation is unlawful in Albania and there are avenues to seek redress. Same-sex relationships are not legally recognised in Albania. However, there is no evidence that this causes serious legal difficulties for relationships between openly gay men.*
- (vi) *In general, it will not be unduly harsh for an openly gay man to relocate to Tirana, but each case must be assessed on its own facts, taking into account an individual's particular circumstances, including education, health and the reason why relocation is being addressed.*

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## GLOSSARY

ACPD	Albanian Center for Population and Development
API	Asylum Policy Instruction
CPD	Commissioner for Protection against Discrimination
CPIN	Country Policy and Information Note
ECRI	European Commission against Racism and Intolerance
ERA	Equal Rights Association
FFM	Fact-Finding Mission
FtTJ	First-tier Tribunal Judge
HO	Home Office
HRW	Human Rights Watch
ICI	Independent Chief Inspector
ILGA-Europe	European Region of the Lesbian, Gay, Bisexual, Transgender and Intersex Association
LGBT	Lesbian, Gay, Bisexual and Trans
LGBTI	Lesbian, Gay, Bisexual, Trans and Intersex
MSWY	Ministry of Social Welfare and Youth
NAP	National Action Plan
NGO	Non-Governmental Organisation
OMSA	Open Mind Spectrum
OSCE	Organization for Security and Co-operation in Europe
PA	People's Advocate
PRIDE	Promoting Rights, Inclusiveness, Dignity and Equality
UNDP	UN Development Programme
USSD	United States State Department
WHO	World Health Organisation

## DECISION AND REASONS

### INTRODUCTION

#### **Country Guidance**

1. This is a decision to which we have both contributed. The issues which we have to consider relate to gay men in Albania.
2. The existing country guidance is IM (Risk, Objective Evidence, Homosexuals) Albania CG [2003] UKIAT 00067 ("IM") which can be summarised as follows:
  - (i) Other than two incidents in 1994 and 2001, there was no evidence to suggest that there is generalised treatment of homosexuals in Albania which is of a persecutory nature or in breach of their human rights ([5]);
  - (ii) Equally, there is no evidence apart from a single incident in 1994 that homosexuals in Albania are treated adversely by the police although there is

evidence that those detained and arrested by police on suspicion of criminal activity may be ill-treated ([5] and [6]);

(iii) There is therefore “no country background evidence which supports a reasonable likelihood that homosexuals as such in Albania are subject to any action on the part either of the populace or the authorities which would amount to persecution for the purposes of the Refugee Convention or would be in breach of their protected human rights.”

3. The question posed for country guidance in this appeal which is that of an openly gay man is as follows:

*“Whether there is a sufficiency of protection from harm by the state for the appellant in his home area in Albania and if not whether there is protection available for him in Tirana or elsewhere. If it is, whether it is reasonably open to the appellant to relocate to Tirana (or elsewhere) in the light of his sexual orientation as a gay man.”*

4. The Respondent accepts that the Appellant suffered persecution in his home area (in the north of Albania). He accepts that the Appellant could not be expected to return there because this would require him to have day to day contact with his former persecutors. The Respondent also accepts that there “remains a question mark about the degree of protection [the Appellant] would expect to receive from the local police”. Although the Respondent did not concede that all areas outside Tirana are similarly unsafe for return (which may be relevant to the determination of that issue in other appeals), he did not suggest that there is any location other than Tirana to which the Appellant could return.

5. As a result, the areas on which we heard evidence have also narrowed which delineates the extent of the issues on which we are able to provide general guidance. The Respondent describes the position for gay men outside Tirana as potentially “more challenging and isolating” but contends that Tirana has, on the evidence, a more liberal society. Although the Respondent does not necessarily concede that the risk of street or domestic violence to openly gay men exists in all parts of Albania outside Tirana, given the Respondent’s concession about the risk to the Appellant in the north of Albania, the evidence we heard has been focussed on the risk or sufficiency of protection in Tirana.

6. Accordingly, our consideration of risk, sufficiency of protection and internal relocation is limited to the position in Tirana. When we refer to Tirana, we intend to mean the wider conurbation except where we refer expressly to any narrower area. We explain later in our decision the extent to which the guidance in IM stands in consequence.

7. Although the country specific evidence mostly refers in general terms to LGBT or LGBTI individuals, the focus of the expert report is on the position of gay men in Albania and that is the only factual scenario before us. When we refer to gay men, we acknowledge and understand that this is a general term which can include

bisexual men, men who have sex with men and men who identify as or may be perceived as gay by those who are not. However, although there may be an overlap between the factors affecting the various LGBTI groups, there are likely to be different considerations applying, for example, to transgender individuals. It would be inappropriate to consider those issues in a factual and evidential vacuum. In giving country guidance, we determine only the position for openly gay men returning to Albania and for reasons we give above only to Tirana.

8. In terms of what we mean by “openly gay”, although Mr Chelvan provided us with some examples of ways in which he said an openly gay man might expect to be able to behave, the parties and Ms Young were unable to offer us any useful definition. We therefore provide our understanding of that term. It cannot be understood as involving the same behaviour for each gay man. Gay men, as with heterosexual men, may exhibit their sexuality in different ways. We consider an appropriate definition as being someone who does not conceal his sexuality except insofar as he wishes to do so for reasons other than a fear of persecution.
9. The Appellant accepts that there have been legislative changes in Albania decriminalising homosexuality and providing sanctions against discrimination on grounds of sexual orientation. The Appellant’s case is that these changes have not been adequately implemented and that societal attitudes still give rise to a real risk of violence whether in public or within the family. It is accepted that there are some mechanisms for redress, but those mechanisms are not effective due to the deficiencies in implementation of the law. There is no sufficiency of protection to guard against the real risk even in Tirana. It is also claimed that the level of discrimination against gay men in Albania, even in Tirana, is such that it amounts to persecution. In relation to relocation to Tirana, it is also argued that, as a newcomer to the community, a gay man would be asked questions about family and background leading to his identification as gay and consequent risk on that account. In addition, criminal checks made on arrival at the airport or other sharing of information during the registration process with the Albanian authorities in a person’s home area would lead to the individual being traced to Tirana and thereby lead to a real risk of further harm.
10. The Respondent’s case is that, although the legislative changes made in Albania in relation to gay rights “have been described as the most progressive in the region”, there is a degree of disconnect between, on the one hand, the will of the government in enacting those laws and the demonstration by public officials of a willingness and ability to partner with LGBT activists to reform and implement training and, on the other, the change to societal awareness and attitudes. The Respondent accepts that the conservative nature of Albanian society means that a gay man may face incidents of intolerance, discrimination, physical and psychological violence, job loss, eviction, threats and rejection by their family. However, it is argued that the level of such risk and discrimination does not, by reason of its frequency and nature, reach the threshold of persecution. There would also be a sufficiency of protection offered by the police and other state institutions to guard against or to offer redress against such

risk and discrimination. It is asserted that Tirana is a more modern and liberal environment than, for example, the more traditional, conservative north of Albania. It is argued that the disconnect between the passing of laws prohibiting discrimination on grounds of sexual orientation and the implementation of those laws which might impact on the ability to protect is less pronounced in Tirana. The Respondent argues that the socio-economic position in Tirana would enable a young, gay man to find employment and accommodation. It would therefore be reasonable for a gay man to relocate to the capital.

### **The Appellant's Appeal**

11. The Appellant was born in Has in the north-east of Albania. He is currently aged twenty-four and first arrived in the UK in March 2015. During his first period of time here, on 18 November 2015, he was sentenced to a period of 28 days' imprisonment for an offence of sexual assault on a female. The Appellant says that the reason he committed the offence was to prove to his Albanian friends that he was not gay. It is not now disputed that he is gay. The Appellant was removed from the UK to Albania on 17 December 2015 as an illegal entrant and was next encountered having returned to the UK (again unlawfully) on 29 April 2017 whereupon he claimed asylum. The basis for his claim is his sexual orientation. This was accepted by the First-tier Tribunal Judge. That finding was not challenged by the Respondent and was preserved in the error of law decision.
12. In terms of risk on return to Albania, the Appellant's account is that whilst in the UK on the first occasion, he had a one-night encounter with a man named Pirro. A photograph of them together was placed on Facebook and seen by the Appellant's friends in Albania who beat him up on his return there when they found out that he was gay. His father also found out about the photograph and also beat him over a prolonged period until the Appellant succumbed to his father's demand that he should marry the daughter of a business associate. Having agreed to do so, her family also became aware of his sexuality and they too attacked him. When he returned home, his father beat him again. We do not need to go further into the particulars of the accepted attacks on the Appellant; suffice it to say that he was driven to consider suicide but passed out and woke up in a hospital apparently local to his home area.
13. When the Appellant left hospital in late 2016, he went to Tirana where he remained until he returned to the UK. A friend provided him with work in a car-wash and accommodation for part of the period (although he also says that he slept rough and in hotels for part of the time). The Appellant did not disclose his sexuality to his friend. He also says that it was always his intention to leave Tirana and to come to the UK which he then did.
14. By a letter dated 22 June 2017, the Respondent refused the Appellant's asylum claim. He did not accept the claim as credible and disputed the Appellant's sexuality. In her decision promulgated on 4 September 2017, First-tier Tribunal Judge O'Garro

dismissed the Appellant's appeal. Although she accepted the factual basis of his claim (including his sexual orientation), she did not accept that he would be at risk on return for a number of reasons. First, she found that he would conduct himself discreetly on return. She did not therefore accept that his sexual orientation would be discovered. Second, she found that he could safely return to Tirana where he would be protected by the police and NGOs and could access a shelter provided by one of those NGOs.

15. Permission to appeal was granted by UTJ Smith on all grounds on 25 January 2018. By his decision promulgated on 1 May 2018, UTJ Kopieczek accepted a concession by the Respondent that the decision of FtTJ O'Garro contained various errors of law and set aside that decision. His error of law decision is annexed to this decision as "Annex A". In broad terms, those errors are the FtTJ's finding that the Appellant would conduct himself discreetly on return, that protection by NGOs is relevant to the issue of sufficiency of protection and that some background material was left out of account when judging sufficiency of protection and internal relocation. The FtTJ had also failed to make a finding on whether the Appellant had suffered past persecution when assessing future risk. Judge Kopieczek preserved the factual findings made by FtTJ O'Garro save as infected by the errors of law.
16. The Respondent accepts that the Appellant will wish to lead an "openly gay life" in Tirana. He does not wish to pretend that he has any interest in a sexual relationship with a woman. He would tell those who asked about why he does not have a girlfriend that this is because he is gay. The Appellant's oral evidence was that he would not tell those he meets of his sexuality immediately on meeting them but would wish to reveal his sexuality when he gets to know people at a time of his choosing.
17. The Appellant's appeal is on protection grounds only. He is not pursuing a claim that removal to Albania would breach his Article 8 ECHR rights.

## **THE LAW**

### **Introduction to the Protection Claim**

18. In order to be recognised as a refugee an appellant must show that he has a well-founded fear of persecution for one of five reasons set out in Article 1(A) of the 1951 Refugee Convention i.e. for reasons of race, religion, nationality, membership of a particular social group or political opinion. The 1951 Convention is interpreted in European law through Council Directive 2004/84/EC ("the Qualification Directive"). The Qualification Directive is incorporated in UK law through The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and the Immigration Rules.
19. Article 9 of the Qualification Directive sets out what is meant by an act of persecution within Article 1(A) as follows (so far as relevant to this appeal):



- “1. Acts of persecution within the meaning of article 1A of the Geneva Convention must:
- (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
  - (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).
2. Acts of persecution as qualified in paragraph 1, can *inter alia*, take the form of:
- (a) acts of physical or mental violence, including acts of sexual violence;
  - (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
- ...
- (f) acts of a gender-specific or child-specific nature.
3. In accordance with Article 2(c), there must be a connection between the reasons mentioned in Article 10 and the acts of persecution.”

20. We have already noted that the Appellant does not pursue an Article 8 ECHR claim. The only human right which is relevant to our consideration, therefore, is Article 3 of the 1950 European Convention on Human Rights which prohibits torture, inhuman or degrading treatment. It is an absolute right from which there can be no derogation. An appellant must show that there are substantial grounds for believing that there is a real risk that the consequence of removal would violate his rights under Article 3.

21. The burden of proof is on the Appellant to establish his claim and that there is a real risk that he will be subjected to persecution or serious harm on return to Albania. We do not accept Mr Chelvan’s submission that this generally understood standard is affected by the reference to a “one in ten chance” in the speech of Dyson JSC in HJ (Iran) and HJ (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31; [2011] 1 AC 596 (“HJ (Iran)”) at [91]. The entire citation is that:

“...it may be debatable whether a gay man would be at real risk of persecution (in the Convention sense) if, on returning to his own country, he would face a one in ten risk of being prosecuted and made to pay a fine, or sent to prison for a month. But if he would face a one in ten risk of being prosecuted and sentenced to death by public hanging from a crane there could only be one answer”.

As is clear from the reference read in context, Dyson JSC was simply comparing the gravity of the ill-treatment which might be suffered (by reference back to what is said at [90]). The assessment of risk must be considered at the date of the hearing before us.

## Particular Social Group

22. It is common ground that the Convention reason which applies in this case is membership of a particular social group. This is explained in Article 10 of the Qualification Directive as follows:

“1. Member States shall take the following elements into account when assessing the reasons for persecution:

...

(d) a group shall be considered to form a particular social group where in particular:

- members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;

depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article.”

23. In the case of AA v Secretary of State for the Home Department [2006] UKAIT 00061, the AIT (as it then was) had to consider a risk said to arise not because of individual circumstances of the particular appellant, but because of the belonging to or perception of belonging to a particular class of persons. The AIT held that in such circumstances, the appellant needs to show “only that there is a consistent pattern of such mistreatment such that anyone returning in those circumstances faces a real risk of coming to harm even though not everyone does”. That approach was upheld by the Court of Appeal in AA (Zimbabwe) v Secretary of State for the Home Department [2007] EWCA Civ 149:

“The issue is whether the evidence establishes a real risk. The Appellant does not need to show a certainty or probability that all failed asylum seekers returned involuntarily will face serious ill-treatment upon return. He needs to show only that there is a consistent pattern of such mistreatment such that anyone returning in those circumstances faces a real risk of coming to harm even though not everyone does.”

24. Mr Chelvan does not argue that this approach does not apply but adds the caveat that, when looking at the group to which the Appellant belongs, we should consider the position of openly gay men in Tirana and not simply gay men in Tirana. We accept that this is the correct approach.

### **Living Openly**

25. We have referred in the introduction to our definition of an openly gay man as being someone who does not conceal his sexuality except insofar as he wishes to do so for reasons other than a fear of persecution. This is consistent with what was said by the Supreme Court in the leading cases of HJ (Iran). It is common ground that the Supreme Court’s judgment applies here. There is however a dispute as to the

guidance which emerges from the judgment. Mr Chelvan relies on what is said by Lord Rodger JSC at [82] as follows:

*“The approach to be followed by tribunals*

82. When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.

If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant’s country of nationality.

If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.

If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living “discreetly”.

If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself why he would do so.

If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e.g., not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.

If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.”

He points out that it was Lord Rodger’s guidance which was expressly approved by Lord Walker ([86] and [98]), Lord Collins ([11]) and Dyson JSC at [132].

26. Mr Thomann relies on the guidance given by Lord Hope at [35] and [15] of the judgment:

*“The test*

35. This brings me to the test that should be adopted by the fact-finding tribunals in this country. As Lord Walker points out in para 98, this involves what is essentially an individual and fact-specific inquiry. Lord Rodger has described the approach in para 82, but I would like to set it out in my own words. It is necessary to proceed in stages.

(a) The first stage, of course, is to consider whether the applicant is indeed gay. Unless he can establish that he is of that orientation he will not be entitled to be treated as a member of the particular social group. But I would regard this part of the test as having been satisfied if the applicant's case is that he is at risk of persecution because he is suspected of being gay, if his past history shows that this is in fact the case.

(b) The next stage is to examine a group of questions which are directed to what his situation will be on return. This part of the inquiry is directed to what will happen in the future. The Home Office's Country of Origin report will provide the background. There will be little difficulty in holding that in countries such as Iran and Cameroon gays or persons who are believed to be gay are persecuted and that persecution is something that may reasonably be feared. The question is how each applicant, looked at individually, will conduct himself if returned and how others will react to what he does. Those others will include everyone with whom he will come in contact, in private as well as in public. The way he conducts himself may vary from one situation to another, with varying degrees of risk. But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it. If he fears persecution as a result and that fear is well-founded, he will be entitled to asylum however unreasonable his refusal to resort to concealment may be. The question what is reasonably tolerable has no part in this inquiry.

(c) On the other hand, the fact that the applicant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test. As I said earlier (see para 15), the Convention was not directed to reforming the level of rights in the country of origin. So it would be wrong to approach the issue on the basis that the purpose of the Convention is to guarantee to an applicant who is gay that he can live as freely and as openly as a gay person as he would be able to do if he were not returned. It does not guarantee to everyone the human rights standards that are applied by the receiving country within its own territory. The focus throughout must be on what will happen in the country of origin.

(d) The next stage, if it is found that the applicant will in fact conceal aspects of his sexual orientation if returned, is to consider why he will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his own choosing and not because of a fear of persecution, his claim for asylum must be rejected. But if the reason why he will resort to concealment is that he genuinely fears that otherwise he will be persecuted, it will be necessary to consider whether that fear is well founded.

(e) This is the final and conclusive question: does he have a well-founded fear that he will be persecuted? If he has, the causative condition that Lord Bingham referred to in *Januzi v Secretary of State for the Home Department* [2006] 2 AC 426, para 5 will have been established. The applicant will be entitled to asylum"

...

"15. The guarantees in the Universal Declaration are fundamental to a proper understanding of the Convention. But the Convention itself has, as the references in para 12 show, a more limited purpose. It is not enough that members of a particular social group are being discriminated against. The contracting states did not undertake to protect them against discrimination judged according to the standards in their own countries. Persecution apart, the Convention was not directed to reforming the level of

rights prevailing in the country of origin. Its purpose is to provide the protection that is not available in the country of nationality where there is a well-founded fear of persecution, not to guarantee to asylum-seekers when they are returned all the freedoms that are available in the country where they seek refuge. It does not guarantee universal human rights. So the conditions that prevail in the country in which asylum is sought have no part to play, as matter of legal obligation binding on all states parties to the Convention, in deciding whether the applicant is entitled to seek asylum in that country: *Januzi v Secretary of State for the Home Department* [2006] UKHL 5, [2006] 2 AC 426, paras 16, 46. As Laws LJ said in *Amare v Secretary of State for the Home Department* [2005] EWCA Civ 1600, [2006] Imm AR 217 para 31:

“The Convention is not there to safeguard or protect potentially affected persons from having to live in regimes where pluralist liberal values are less respected, even much less respected, than they are here. It is there to secure international protection to the extent agreed by the contracting states.”

27. In summary, as we understand Mr Chelvan’s submission, it is that Lord Hope draws attention to cultural or religious reasons as well as social pressures for concealing sexuality whereas Lord Rodger refers only to the latter. Lord Hope distinguishes between concealment for fear of persecution and behaviour which is triggered by those other factors whereas Lord Rodger, in Mr Chelvan’s submission, does not spell out the distinction in quite the same way. In essence, Mr Chelvan says, if a gay man is unable to live as openly and freely as he would like and as he is able to do in the country of refuge, then he is entitled to protection against return.
28. Ultimately, we are unclear how the distinction which Mr Chelvan seeks to draw makes any difference in this case. However, in light of the submissions made, it may assist if we offer our observations on the argument.
29. First, referring to the judgment in HI (Iran), when his speech is read as a whole, Lord Hope clearly did not consider himself to be departing in any way from the guidance given by Lord Rodger. He refers to Lord Rodger’s approach without dissent and says simply that he “would like to set it out in [his] own words”. The other members of the Court did not voice any dissent with his opinion and nor did Lord Rodger draw any distinction between his guidance and that of Lord Hope.
30. Second, insofar as there is any difference between Lord Hope’s speech and the guidance of Lord Rodger, there is no distinction in substance and any difference seems to us to amount to only this. At [35(b) and (c)], Lord Hope draws a distinction between a person seeking asylum based on a fear of persecution if he behaves as he would wish and a person seeking asylum because he is not able to live as openly in the country of return as he may be able to do in the country of asylum. Lord Hope sets out that distinction at [35(c)]. In the following sub-paragraph, he refers to an applicant concealing his sexuality not only due to social pressures but also for cultural or religious reasons.
31. In the case of HL (Malaysia) v Secretary of State for the Home Department [2012] EWCA Civ 834, the Court of Appeal dealt with the issue of whether there is in fact

any distinction to be drawn between the speeches of Lords Rodger and Hope as follows:

"10...Mr Sheldon submits in essence that Lord Hope's statement that "the fact that the appellant will not be able to do in the country of his nationality everything that he can do openly in the country whose protection he seeks is not the test" conflicts with Lord Rodger's declaration that the Convention protects "his right to live freely and openly as a gay man".

11. In the course of his submissions this morning Mr Sheldon submitted that this latter proposition is very much the focus of Lord Rodger's approach. For my part I do not consider that there is any inconsistency between the observations of Lord Hope and those of Lord Rodger. First, it is important to notice that both of their Lordships insist that an asylum applicant cannot be required to conceal or dissemble or be discreet out of a fear of persecution because of his sexual orientation. It is plain to me that Lord Hope puts this proposition quite as strongly as does Lord Rodger. For emphasis I repeat this sentence from paragraph 35 in Lord Hope's judgment:

"But he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it."

12. Next, Lord Rodger's insistence that the Convention protects the right to live freely and openly as a gay man is in my view entirely consistent with Lord Hope's reminder that the Convention does not guarantee universal human rights. Both these propositions are, with respect, true and important. "To live freely and openly as a gay man" means what it says, no more, no less. It does not necessarily require all the congenial cultural encouragement of a liberal and tolerant society.

13. Thirdly, I should emphasise that, even if in a particular country a gay person might not live freely and openly as such, an applicant will not be entitled to refugee status if he would behave discreetly for reasons quite other than a fear of persecution. In such a case there is no nexus between the possible persecution of overt gays and the applicant's conduct. In my judgment Immigration Judge Turquet was quite right to say at paragraph 28:

"It should always be remembered that the purpose of the exercise to separate out those who are entitled to protection because their fear of persecution is well-founded from those who are not. The causative condition is central to the inquiry. This makes it necessary to concentrate on what is actually likely to happen to the applicant."

14. It seems to me that the structured approach in Lord Rodger's guidance at paragraph 82, though of course important, was not, with respect, intended as a straitjacket in these cases. Lord Rodger himself recognises the importance of the question why a person who is gay might act discreetly in his country of origin if returned there. I should note two short passages which I have not so far set out. In his judgment at paragraph 75 Lord Rodger says this:

"75. In my view the core objection to the Court of Appeal's approach is that its starting point is unacceptable: it supposes that at least some applications for

asylum can be rejected on the basis that the particular applicant could find it reasonably tolerable to act discreetly and conceal his sexual identity indefinitely to avoid suffering severe harm."

I emphasise the last words. Likewise at paragraph 76:

"No-one would proceed on the basis that a straight man or woman could find it reasonably tolerable to conceal his or her sexual identity indefinitely to avoid suffering persecution. Nor would anyone proceed on the basis that a man or woman could find it reasonably tolerable to conceal his or her race indefinitely to avoid suffering persecution."

Throughout, as it seems to me, the focus and emphasis is upon the fear of persecution in the particular case."

32. We do not accept Mr Chelvan's additional submission that we should ignore the judgment in HL (Malaysia) simply because it has never been followed. It is a judgment of the Court of Appeal and therefore binding on us unless overruled. Mr Chelvan submits that the judgment in HL (Malaysia) is inconsistent with what was said by Lord Dyson in RT (Zimbabwe) v Home Secretary [2012] UKSC 38, [2013] 1 AC 152 (with whose judgment the other Law Lords agreed) and for that reason should not be followed. Mr Chelvan submitted that Lord Dyson there rejects what Mr Chelvan describes as the argument based on "cultural relativism". The only passage of RT (Zimbabwe) to which Mr Chelvan directs our attention on this issue is [18] where Lord Dyson, delivering the unanimous judgment of the Court, referred only to "social pressures" and not also cultural or religious reasons as Lord Hope had done in his formulation. We do not though discern Lord Dyson's judgment to be a comment that cultural or religious reasons cannot be pressures that might influence an applicant to conceal his sexuality. In RT (Zimbabwe), the reasons were social in nature and any wider issues did not arise. At [18] of the Supreme Court judgment, Lord Dyson is referring to the submissions of Mr Fordham and agreeing with them rather than laying down any additional or alternative formulation. The reference there to HJ (Iran) is to [61] of Lord Rogers' speech where he was specifically considering an example of a person being subject to pressures from society. The fact that he refers to those as "social pressures" does not mean that he was excluding other reasons why a person might choose to behave discreetly. Indeed, in setting out the example at [61], Lord Rogers refers to "prevailing culture" indicating that what was there under consideration is how an applicant might be influenced by both the society and culture which would surround him on return.
33. We also note that although HL (Malaysia) preceded the hearing in RT (Zimbabwe) it was not referred to by the parties. It was not suggested in RT (Zimbabwe) that any distinction is to be drawn between the speeches of Lords Rodgers and Hope in HJ (Iran). We also fail to see how what is said by Lord Dyson in RT (Zimbabwe) differs from what is said by Lord Hope in relation to the extent of protection offered by the Refugee Convention in these cases; the essential question is whether an individual will conceal aspects of his sexuality because he fears persecution or a real risk of

serious harm (unless of course an applicant is relying also on Article 8 ECHR in which case interference with private life may import wider considerations).

34. In short summary of the above, the essential question which arises from HJ (Iran) is how an individual will behave on return and why he will behave in that way. If his behaviour is adapted by concealment of his orientation because of an objectively well-founded fear of persecution or real risk of serious harm, he is entitled to protection. If his behaviour is adapted for other reasons, then he is unlikely to be recognised as a refugee.

### **“The Silence Fallacy”**

35. That brings us on to the Appellant’s other argument which seeks to widen the guidance in HJ (Iran). Mr Chelvan submits that because of the “heteronormative culture” of Albanian society, those who “deviate from the heterosexual narrative” are at risk because they will be perceived as different. Mr Chelvan submits that a gay man in Albania would, in order to avoid risk, have to “prove a heterosexual narrative” (i.e. “prove straight”) in order to conceal his actual sexual orientation. For that reason, irrespective of whether he would behave discreetly for his own reasons or not, he would be entitled to protection because he could not be expected to behave in a way which runs completely contrary to his sexual orientation.
36. That argument considered by the Court of Appeal in LC (Albania) v Secretary of State for the Home Department [2017] 1 WLR 4173 at [52(vii)] is as follows:

“To an extent, Mr Chelvan went further than the intervener. He submitted that, in drawing a distinction between forced and voluntary modification, the fourth limb of the guidance is misconceived, because being discreet about his sexual orientation can never in practice protect a gay man from persecution because of what he describes as “the silence fallacy” in sexual orientation cases, ie an assumption that, in a homophobic homeland, an individual will be safe as long as he is silent about his actual sexual orientation. For that proposition, he relied upon a number of authorities, including *SW (Jamaica)* [2011] UKUT 251 (IAC) ... and other Jamaican cases to the same effect; and *Hysi v Secretary of State for the Home Department* [2005] INLR 602 in which this court found that it would be unrealistic for the appellant to lie about the relevant characteristic in that case, namely his ethnicity. However, in my view, a submission that Albania is a country where it is impossible for a gay man to avoid being perceived as gay without engaging in some form of positive behaviour, as Mr Chelvan suggests, would require some evidential basis. There is no such basis here...

(viii) Nor do I find persuasive Mr Chelvan’s submission that the claimant’s concealment of his sexual orientation in Albania would not be voluntary, as the First-tier Tribunal found that his choice to be discreet on return was not a purely internal choice, but was “motivated by social pressure”... In passing, I note the tribunal’s finding that, on return, the claimant would not be at risk from his family ...but the submission is conclusively answered by the judgments in *HJ (Iran)* which draw a clear distinction between concealment of sexual orientation “in response to social pressures or for cultural or religious reasons of his own choosing” and concealment because of a



fear of persecution, because the Convention does not afford protection against these social pressures.. and so an applicant cannot claim asylum in order to avoid them”: see para 36 per Lord Hope DPSC, and para 61 per Lord Rodger JSC. With respect to the submission of Mr Chelvan to the contrary, that must be right; because, whilst no doubt varying in nature and extent, such social pressures are present in all countries, including the UK. I specifically reject Mr Chelvan’s submission that, in some (unspecified) way, the scope of the Qualification Directive is different from that of the Geneva Convention.”

37. With respect, we agree with the Court of Appeal’s analysis of Mr Chelvan’s argument. However, as a matter of law, his submission does not appear to us to add to the legal test which we have already posited: how will an appellant choose to behave on return, why will he choose to behave in that way and is that choice of behaviour to avoid a well-founded fear of persecution? Whether that test is met depends on the evidence which we address below.

### **Sufficiency of Protection**

38. The test in relation to whether there exists a sufficiency of protection to protect against a risk which arises in the country of return is set out in the leading case of Horvath v Home Secretary [2001] 1 AC 489 at 510f (in the speech of Lord Clyde) as follows:

“There must be in place a system of domestic protection and machinery for the detection, prosecution and punishment of actings contrary to the purposes which the Convention requires to have protected. More importantly there must be an ability and readiness to operate that machinery.”

39. Lord Clyde added at 511c that “it will require cogent evidence that the state which is able to afford protection is unwilling to do so, especially in the case of a democracy”.
40. There was substantial agreement between the parties as to the appropriate test. Mr Chelvan however takes issue with the Respondent’s case because he says that the Respondent relies on the work of the LGBT NGOs operating in Albania as agents of protection. Our attention is drawn to Article 7 of the Qualification Directive which sets out those who may be considered to be agents of protection as follows:

- “1. Protection can be provided by:
    - (a) The State; or
    - (b) Parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State.
  2. Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and the applicant has access to such protection.
- ...”

41. We do not understand the Respondent to be relying on the LGBT NGOs as State agents of protection. We agree with the Appellant's submission that those organisations are not actors of protection. However, they are capable of being part of the apparatus which holds the State to account in the provision of such protection as is included in the legal framework operating in Albania and to that extent we agree with Mr Thomann that their presence and the work they do in, for example, making complaints on behalf of individuals affected by discrimination is relevant to the issue of sufficiency of protection.

### Internal Relocation

42. The test in relation to whether a person at risk in one area of the country of return can be expected to relocate to another part of that country where the risk does not exist or where protection is available from risk in the home area is set out in the speech of Lord Bingham in Secretary of State for the Home Department v AH (Sudan) and others [2007] UKHL 49 as follows:

"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, evident 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."

43. Mr Chelvan queried in his closing submissions whether the Respondent also relies on [42] of the judgment in AH (Sudan) to the effect that the Appellant is in no worse position than any other openly gay man in Tirana and can therefore be expected to relocate. We do not understand Mr Thomann to be making that argument. Paragraph [66] of his closing submissions cites [5] of the House of Lords' judgment

which, albeit making clear that the general conditions prevailing in the place of return are relevant, confirms that the situation is that of the particular applicant.

### **Discrimination in Status of Gay Relationships**

44. A further legal issue between the parties concerns the absence of recognition in Albanian law of the status of relationships between gay men either as civil partnerships or marriages in the context of whether discrimination on this basis individually or combined with other discrimination makes out a case of persecution.
45. Mr Chelvan drew our attention to the Court of Appeal's judgment in SB (India) and CB (India) v Secretary of State for the Home Department [2016] EWCA Civ 451. As the headnote to the judgment makes clear, those cases were concerned with a claim that removal would breach Article 8 ECHR. As we have already noted, the Appellant does not make a claim that Article 8 would be breached. Mr Thomann submits that this judgment shows that, in an Article 8 case, it will only be where there is a flagrant breach of such rights that removal would be disproportionate. Mr Chelvan argues that a flagrant breach is not required and that the Court of Appeal's judgment is to be distinguished from this case because the Court was there considering removal to a country (India) which is not a signatory to the ECHR whereas here Albania is a signatory.
46. We consider this submission to be misconceived. The reason why the Court of Appeal considered SB (India) to be a "foreign case" has nothing to do with whether the country of return is within or outside the jurisdiction of the Strasbourg Court but because of the nature of the obligation of the country effecting the removal. Referring to case-law as far back as Ullah v Special Adjudicator [2004] 2 AC 323, the Court of Appeal distinguished between positive obligations of a member state where what is at issue is measures being taken within that state and negative obligations inherent in the removal process not to remove to a country where a person's human rights will be breached. Although there is reference in the judgment to the country of return being a "non-Convention country" that does not in our view affect the essential point made by reference to Ullah that what is in issue in a foreign case is not the direct responsibility of the member state. As Mr Thomann observed and we accept, there is perhaps even less responsibility imposed on a state returning to another member state because the individual has the option of petitioning the Strasbourg Court directly if his own state is failing in its obligations.
47. Mr Chelvan confirmed that the Appellant is not pursuing an Article 8 ECHR ground. Insofar as he seeks to rely on discrimination engaging the Refugee Convention, whether the discrimination in question is sufficient to amount to persecution depends on the evidence and we deal with that when making our findings below.

### **Existing Country Guidance**

48. We have set out in the introduction section, the headline findings of the existing country guidance in IM. Although Mr Chelvan submits that the decision of UTJ Kopieczek in KL (Albania) v Secretary of State for the Home Department (AA/02967/2014 – unreported) is a more reliable and up-to-date consideration of the country evidence than the country guidance, the latter is unreported and Judge Kopieczek expressly disavowed any intention to establish any point of principle or general guidance. Whether he did so under a misapprehension as to the existence of other country guidance which had in fact been withdrawn is neither here nor there. It is part of our function to decide whether the existing country guidance still holds good and the extent to which it may need varying.

## THE EVIDENCE

### Country Specific Evidence

49. We received a bundle and supplementary bundle of background evidence jointly submitted by both parties. We refer to documents in those bundles hereafter as [B/xx] and [E/xx] respectively. We also received a bundle of evidence of material relating specifically to the Appellant to which we refer hereafter as [A/xx]. The indices to the background evidence bundles are reproduced as Annex B to this decision. We also received some additional documents which are listed after the indices. To simplify references hereafter to the main reports that we need to consider, those are summarised below:

(1) *United Nations' Organisations:*

The UN Development Programme in conjunction with US Aid has issued a report entitled “Being LGBTI in Eastern Europe: Progress, Drawbacks, Recommendations” dated 3 December 2017 and an associated country report in relation to Albania (together referred to hereafter as “the UNDP 2017 Report”) ([B/565-605]). The UNDP 2017 Report is based on data from several sources including a national round table, community dialogues, interviews, field visits and focus groups with LGBTI individuals, discussions with stakeholders and LGBTI organisations and a desk review of published material (see Executive Summary at [B/567]).

(2) *European Union:*

These include:

- (a) The European Council’s Conclusions on the Enlargement and Stabilisation and Association Process in relation to a number of countries including Albania and dated 26 June 2018 is at [B/112-139] (the “EU Conclusions Document”). The EU Conclusions Document includes a summary of the progress made by Albania in its move towards accession talks with the EU and identifies steps which still need to be taken.
- (b) The European Commission’s Staff Working Document reporting on Albania for 2018 and dated 17 April 2018 (“the EU 2018 Report”) ([B/218-324]).
- (c) The Commission’s Staff Working Document reporting on Albania for 2016 (“the EU 2016 Report”) ([E/1-95]).

- (d) An undated report issued by the Council of Europe entitled “Preventing and Combating Discrimination on Grounds of Sexual Orientation and Gender Identity” (“the EU Discrimination Report”) (B/722-723).

(3) *ILGA-Europe*

ILGA-Europe is the European Region of the Lesbian, Gay, Bisexual, Trans & Intersex Association (ILGA). We have before us a number of reports published by ILGA-Europe:

- (a) The “Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2017 – Albania” dated 17 May 2017 (“the ILGA 2017 Review”) (dealing with the position as at end December 2016) ([B/364-367 and B/618-621]).
- (b) The Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2018 – Albania dated 14 May 2018 (“the ILGA 2018 Review”) (dealing with the position as at end December 2017) ([B/182-183]).
- (c) The LGBTI Enlargement Review 2017 dated 17 May 2018 (“the 2017 ILGA Enlargement Review”) ([B/151-181])
- (d) A document entitled “Albania and FYR Macedonia accession talks recommended” dated 19 April 2018 [B/212-213] (“the ILGA Document”).

(4) *The Home Office*

- (a) The Home Office Country Policy and Information Note entitled “Country Policy and Information Notice: Albania: Sexual Orientation and Gender Identity” (version 4.0 dated May 2017) (“the May 2017 CPIN”) ([B/623-662]).
- (b) Country Policy and Information Note entitled “Albania: Background information including actors of protection, and internal relocation” (version 2.0 dated July 2017 (“the July 2017 CPIN”) (Tab [21] of second supplementary bundle of authorities)
- (c) Country Policy and Information Note entitled “Albania: Women fearing domestic abuse” (version 2.0 December 2017) (“the December 2017 CPIN”) (with additional documents).
- (d) “Report of a Fact-Finding Mission, Albania: Conducted on 31 October to 7 November 2017” dated February 2018 (“the FFM Report”) (B/401-560)]. Although that fact-finding mission was concerned predominantly with the situation for female victims of domestic violence, it has some limited relevance to the issues before us.
- (e) A report entitled “Asylum Claims on the Basis of Sexual Orientation, Experimental Statistics” dated November 2017 (“the Home Office Statistics”) ([B/608-617]).
- (f) Home Office, Asylum Policy Instruction entitled “Sexual Orientation in Asylum Claims” (version 6.0 dated 3 August 2016) (“the API”) ([B/729-769]).

(5) *Documents issued by other States, Non-Governmental Organisations (“NGOs”) and other bodies:*

- (a) The United States Department of State report entitled “2017 Country Report on Human Rights Practices: Albania” dated 20 April 2018 (“the USSD 2017 Report”) ([B/186-211]).
- (b) A Human Rights Watch article dated 7 November 2017 entitled “Sheltering Albania’s Gay Youth from Virulent Homophobia” (“the HRW Article”) ([B/606-607]).
- (c) An Albanian Helsinki Committee article entitled “Public Appeal for the Rights and Freedoms of the LGBTI in Albania” dated 17 May 2017 (“the Helsinki Committee Article”) ([B/622]).
- (d) A LGBTI Equal Rights Association for Western Balkans and Turkey article entitled “Open Lectures on LGBTI Rights in Albania’s High Schools Face Homophobic Backlash” dated 30 March 2018 (“the ERA Article”) ([B/397-400]).
- (e) The Independent Chief Inspector of Borders and Immigration “Inspection of Country of Origin Information, March 2017 report” (“the ICI Report”) ([B/663-718]). The ICI Report is a report issued by David Bolt, the Independent Chief Inspector, but the section in relation to Albania is written by Dr Enkeleida Tahiraj who is a Visiting Senior Fellow at the London School of Economics. The ICI Report comments on the Home Office Country of Origin Information report entitled “Minority Groups, Albania, October 2016” and “Sexual Orientation and Gender Identity, Albania, December 2016”. The comments from the ICI Report insofar as those were accepted by the Home Office are included in the May 2017 CPIN Report. However, our attention was also drawn to some of the comments which were not accepted and therefore not incorporated.

## **The Expert**

- 50. Ms Antonia Young has provided an expert report dated 29 August 2018 ([B/4-72]) in which she covers a wide range of topics concerning corruption in Albanian institutions, the position of and societal treatment of LGBT+ individuals, the ability and willingness of the Albanian Government and Police to provide protection to that group, domestic violence in Albania and the possibility of internal relocation. We will refer to the detail of her report when we come to consider the detail of the evidence below. The Respondent was also given the opportunity to ask written questions of Ms Young prior to finalisation of her report, the answers to which appear at [B/79-93].
- 51. Following the completion of Ms Young’s evidence at the hearing, Mr Thomann produced a small number of documents concerning one of the LGBTI NGOs, PINK Embassy on which Ms Young’s comment was sought. We permitted that to be done by a short series of written questions agreed between the parties to which Ms Young was invited to respond also in writing. To assist her responses, the Appellant’s representatives provided Ms Young with a note of her oral evidence. Instead of confining her response to the questions asked, Ms Young sought to expand upon the answers she gave in oral evidence.

52. Ms Young has a BA degree in anthropology from the University of California. She is a dual British/US citizen and also has a Certificate in Social Work issued by Edinburgh University. She currently holds various honorary, unpaid positions. She has been an Honorary Research Fellow in the Research Unit in South East European Studies at the University of Bradford since 1992. She is a Research Associate in the Department of Sociology/Anthropology at Colgate University in the US although she has only limited activity in this latter role.
53. Ms Young has provided expert evidence in relation to the Balkans for five decades with a particular emphasis on Albania and Albanians since 1989. She visits Albania at least once per year, usually for a few weeks at a time. She has not however lived there and accepts that she speaks only limited Albanian. Ms Young has written a number of publications relating to the Balkans. According to her CV, one of those focussed on gay rights but we have not been provided with the titles nor the article in question. She has served on various boards of study and has led study tours in the region. She has also spoken at various conferences in the region. Ms Young has also served as an OSCE election supervisor and observer in the region since 1997. She advised the US Embassy in Tirana on the social and political situation in Northern Albania from 2008-2010. She was involved in the setting up of the Centre for Peace Studies and Reconciliation of Bloodfeuds in Albania in 1996. She has also worked with Bloodfeud Mediators.

#### *Summary of Ms Young's Evidence*

54. A theme running through Ms Young's evidence is that the changes made by anti-discrimination legislation and the offices created for victims to obtain protection and pursue grievances were brought about predominantly because of Albania's desire to join the EU and do not reflect a real change in attitudes. She says that Albania remains a place of corrupt institutions which are resistant to change. She considers that any changes are ineffective and that openly gay men in a conservative family-orientated and macho society intolerant of same sex behaviour would be at risk. That risk ranges from attacks by homophobic gangs in Tirana and an unsupportive police force who are hostile to LGBTI individuals to a setting where openly gay people would face discrimination and have great difficulties in obtaining employment and accommodation for which family connections are an essential driver. The reach of the family and the enquiring nature of Albanian society is such that the news of re-registration in Tirana will reach the family elsewhere in the country as would mere presence in the city, news of which would pass by gossip. She accepts that things are better in Tirana compared to elsewhere in the country but, even there, the only viable area for relocation is an expensive area known as the "Blloku" where the former communist cadre once lived, and which is now the location of bars and clubs some of which are gay-friendly.

#### *General Observations about Ms Young's Evidence*

55. Ms Young's evidence has been given judicial scrutiny in other appeals before the tribunal as well as the Court of Appeal in (MF (Albania v Secretary of State for the Home Department [2014] EWCA Civ 902: [16] to [18]). The Court made certain criticisms of her evidence but accepted at [16] that Ms Young's summary of her qualifications and experience shows that she has "considerable experience of Albania" (in that particular case in the context of blood feuds). She also, very fairly, draws attention to the criticism in her CV and acknowledges the need to be more objective in her assessment of cases.
56. Specific to the Appellant in this case, Ms Young has expressed her view on the risk which he might suffer if returned to his home area, whether in her view he could obtain sufficient protection and whether he could relocate within Albania. She has criticised the Respondent's decision letter. Whilst we take account of the general issues which Ms Young raises in that section of her report which may impact on our consideration, ultimately, the issues of level of risk, sufficiency of protection and ability to relocate internally are all questions for the Tribunal to determine. This has informed an approach where Ms Young has expressed views on issues that are for us to decide as the Court of Appeal also remarked in MF (Albania) at [16].
57. An expert witness is someone who has specialised knowledge and/or academic qualifications to provide opinions in a particular field and is qualified to give an opinion to assist the Tribunal to determine those issues. In order for the Tribunal to determine the weight which should be attached to the expert evidence, it is necessary for the Tribunal to examine the sources which are relied upon by the expert, if and insofar as the source is not the expert's personal experience. It is not enough for the expert to simply say that "x is the position"; the Tribunal needs to be told why the expert has reached that view.
58. Ms Young's report in several passages does not clearly identify or cross-reference the sources of her information. On some points, it was also unclear whether she had regard to contemporary evidence and reports. She conceded more than once in her oral evidence that some of her evidence derives from "word of mouth" or "anecdotal evidence". It was unclear whether all those whom she consulted on certain issues have current connections to Albania (insofar as we were able to identify the source of her information).
59. Previously uncited material emerged during Ms Young's oral evidence. We permitted her to give that evidence notwithstanding that it was not referred to in her written report. Mr Thomann did not object. This evidence included reliance on certain cases of Albanian appellants for whom she has provided written reports in their asylum appeals. We were not told about the timing of the claims or their underlying facts which may be relevant to the degree of reliance which could be placed on them nor were we given copies of any decisions relating to these cases. We do not know whether the facts relied on by Ms Young were tested in evidence or whether they were accepted by the tribunals who determined the appeals.



60. One example serves to illustrate our concern. Ms Young was asked in re-examination about the sufficiency of the police and their willingness to protect. She referred in her answer to the case of a police officer who had refused to follow instructions to let people through the airport (as an illustration of the continued taking of bribes by the police). The police officer had been threatened for that refusal and had to leave the country. Ms Young wrote a report for the appeal which she said was “ongoing”. When this was probed, she admitted that the appellant’s appeal had been dismissed by the First-tier Tribunal and was to be re-heard. When Mr Thomann asked whether the facts of the claim had been accepted notwithstanding the dismissal of the appeal, Ms Young said that she “believed so”. Her reliance on a case where she did not know or had not checked whether the facts had been accepted undermines the reliability and relevance of her evidence.
61. When Ms Young was taken to documents suggesting, for example, that there had been improvements in the conduct of the police, she also accepted that she “gets to hear all the negatives” in terms of “reports not written up” and would not therefore agree with views expressed in published documents including from LGBTI NGO representatives on the ground in Albania that the behaviour of the police had improved. That was repeated when she said that she “supposed [she was] going by the people she had interacted with” in answer to another question about people not reporting incidents. These answers again appear to be based on claims by Albanian asylum seekers in the UK and information from others who have told her about incidents which she confirmed are not included as specific examples in her report.
62. Ms Young’s recent visit to Albania was for a period in May 2018, in part to conduct enquiries in relation to this appeal. During this visit Ms Young met representatives of the NGOs groups supporting LGBTI individuals in Albania, in particular Tirana (who we identify later in this decision). However, she was not able to provide more than a general account of their circumstances by reason of their apparent lack of interest and, on her own admission, her failure to explore matters in detail. She acknowledged that she failed to ask them about their own experiences as LGBTI individuals (the risks they faced, whether they had cause to report incidents to the police on their own or others’ behalf, if so how frequently and what reaction they received). She does not appear to have discussed with these individuals whether there is a risk from the homophobic gangs that she said continue to exist in Tirana. Ms Young visited a “gay-friendly” bar in Tirana but admitted that she had done so during an afternoon when it was not very busy and that she had not spoken to anyone in those bars about their experiences as openly gay men. She also met with an anthropologist friend from the university in Tirana and had been introduced to her students but did not ask if any of them were openly gay and what problems they had faced if they were. She did not ask the director of the STREHA shelter for LGBTI individuals whether she could visit the shelter and/or speak with any of the individuals who they had assisted. Ms Young did not attempt to speak with either the Government Ministries with responsibility for minority rights, the People’s Advocate (“PA”) or the Commissioner for Discrimination (“CPD”). When Ms Young

was asked by the Respondent in his written questions about the impact of the PA and CPD, she admitted that she was unaware of the existence of those organisations.

63. We were also concerned about Ms Young's understanding of LGBTI issues and individuals. When asked what she considered was meant by "openly gay" in discussing whether one of the NGO representatives was openly gay she said it was "hard to say. Maybe he is not. He was openly gay at the conference in South of Albania. International conference in 2012". In response to a question about a man Ms Young thought she may have spoken to during her visit to the PINK Embassy offices, she said that she had assumed he was openly gay because he worked for that NGO but "he may not have seemed gay outside as he was dressed traditionally. Smartly. Short haircut." We were therefore unclear as to the basis of Ms Young's understanding of LGBTI individuals and their ability to openly express their sexuality.
64. A feature of Ms Young's oral evidence was to rebuff any suggestion that there had been positive changes in Albania except a reluctant acknowledgement that certain developments "should be helpful" or "ought to assist". It is open to an expert to reject propositions put to them, but sustainable reasons are required supported either by their own experience or reference to other evidence. We illustrate our concerns as to whether this has been Ms Young's approach by one example. During cross-examination, Ms Young was taken to the EU 2018 Report at [B/240] which provides figures for the investigation, prosecution and conviction rates in the fight against corruption. Those are stated to have increased between 2016 and 2017 and specific figures are given in support of that increase. Notwithstanding that, when Ms Young was asked about this positive trend in cross-examination, she first asked "what is the positive trend?" to which Mr Thomann responded that she was just being asked whether she agreed or disagreed it was positive she replied "I don't agree. There is no vetting". When she was asked if she had read the document before she said that she "probably had" and when asked again how she assessed the increase in overall convictions and referrals and whether that was not positive, she finally responded in the affirmative. She refused to recognise, even when confronted with background evidence to the contrary, that any changes were being made until forced to accept that the material did tend to support what was being suggested.
65. Despite our reservations, we consider that Ms Young has nonetheless been able to provide us with some insight into aspects of life in Albania and has provided some assistance in relation to the circumstances faced by openly gay men. We accept that Ms Young's experience of Albania and her research provides her with expertise, particularly in commenting on some of the institutions and the development of those institutions. We can give her evidence less weight though when it comes to her knowledge of the current position, particularly for gay men, for the reasons we indicate above.
66. We have also taken into consideration other evidence, in particular, the opinions expressed by those who are familiar with the position for LGBTI individuals in

Albania, particularly Tirana, by reason of their involvement with NGOs supporting such individuals and their own personal experiences. We provide a list of the main interlocutors:

(1) *Kristi Pinderi*:

A LGBTI activist from Albania, founder member and leader of Pro-LGBT, currently living in Canada. Ms Young explains that she has communicated with him by e-mails none of which are produced. She told us that Mr Pinderi has claimed asylum in Canada but was unable to tell us on what basis or whether his claim has been accepted by the Canadian authorities. We have in the bundle a document produced by him dated 15 April 2018, entitled "Expert Opinion Regarding the Situation of Albanian LGBT People and a Review of Legislation Vs It's Enforcement" ([B/325-336]) which we refer to hereafter as his "2018 statement". We were not told the purpose for which this document was produced; it is not suggested that it was prepared for these proceedings.

(2) *Xheni Karaj*:

Leader of Alliance LGBT, also known as Aleanca. Ms Young did not meet Ms Karaj during her visit in May 2018 but has corresponded with her in the past.

(3) *Vasilika Hysa*:

A representative from Aleanca (Alliance LGBT) who Ms Young met in May 2018.

(4) *Arber Kodra*:

Executive Director of Open Mind Spectrum ("OMSA") who Ms Young first met at an international conference in the South of Albania in 2012. She met with him during a visit to Albania in August-September 2017.

(5) *Marsida Cela*:

Director of STREHA, the NGO which runs the LGBTI shelter in Tirana. Ms Young met with Ms Cela in May 2018.

(6) *Altin Hazizaj*:

A lawyer, LGBT activist and chairman of the PINK Embassy. Ms Young met him in May 2018 when she also visited the PINK Embassy offices. Following the hearing, the Respondent also provided an article recording an interview with him in October (which we refer to hereafter as his "October interview"). That document is to be found with the additional documents. Ms Young was invited to comment on this article in the post-hearing questions.

67. We now turn to address the evidence under the following headings.

**A: Legislative Framework, Implementation, Corruption, Societal Attitudes and Role of LGBTI NGOs**

*Legislative Framework Affecting LGBTI Individuals in Albania and its Implementation*

68. The Republic of Albania is a parliamentary democracy. The legislative authority is vested by Albania's constitution in the Assembly. There is both a prime minister and president. The prime minister heads the government. The president has limited

powers. The last elections were held in June 2017. The current prime minister is Edi Rama, the leader of the Socialist Party of Albania.

69. The Constitution enshrines protection of the rights of citizens, including protection from discrimination ([B/569-70]). The rights of LGBTI individuals are not covered specifically in the Constitution. However, two National Action Plans (“NAPs”) are the main policy documents for protecting their rights ([B/567]). Those NAPs relate to the periods 2012-2014 and 2016-20. The NAPs involve the strengthening of links between the civil society organs and government institutions as well as improving public debate and awareness.

70. It is accepted that there have been legislative changes to improve the position of the LGBTI community in recent years which include:

**1995:** Same sex activity decriminalised. The age of sexual consent for heterosexual couples applies equally to same-sex couples.

**2010:** Anti-Discrimination law passed by Parliament which prohibits discrimination on grounds of sexual orientation and gender identity ([B/600]).

**2012:** Parliamentary approval of the Law on Pre-University Education including gender and sexual orientation among prohibited grounds for discrimination in education for both students and teachers ([B/600]).

**2013:** By an amendment approved by Parliament, following a recommendation of the CPD and the PA, sexual orientation and gender identity became protected classes under the country’s hate-crime laws (B/600).

**2015:** Law on Administrative Procedures and Labour Code also amended, including sexual orientation and gender identity as a prohibited ground for discrimination ([B/600]).

71. Where the parties to this appeal part company is in relation to the implementation of these laws. The Respondent’s case is that progress is being made in changing societal attitudes by raising awareness, training of key groups of officials and cooperation between Government and the relevant NGOs. The Appellant’s case is that there has been inadequate if any implementation of the laws, that institutions are corrupt and therefore pay “lip-service” to any changes and insofar as they have effected any changes, the institutions are doing so only to improve Albania’s chances of acceding to the EU. This is the position adopted by Ms Young.

72. The implementation steps involved with the NAP 2012-14 are set out in the UNDP 2017 Report ([B580]):

- “(i) Engagement of the line ministries, CPD, the People’s Advocate Office and international organizations;
- (ii) Addressing LGBTI issues with donors, agencies, international community in Albania and in Europe;
- (iii) Provision of training for police officers and education workers;
- (iv) Interaction and cooperation with other human rights NGOs;
- (v) Conducting research on the legal framework;

- (vi) Legislative proposals;
- (vii) Public awareness-raising, and;
- (viii) Provision of a safe shelter in Tirana to young LGBTI people who are obliged to leave home."

Ms Young was unable to identify any omissions in this strategy or amendments which ought to be made to it.

73. In April 2015, the Ministry of Education signed a cooperation agreement with the LGBT NGOs to provide lectures, presentations and other awareness-raising activities in schools ([B/648]). That such presentations have taken place is evident from other evidence ([B/397-400]; [B/214-6]). Although there is evidence of a backlash and ridicule from some quarters, we note in the article at [B/398] that "[s]tudents gave positive reviews about the presentations and deemed them very helpful in order to understand the challenges their LGBTI peers face and why a more supportive environment is needed. During and after lectures, many teachers and psychologists expressed their support for these lectures as well." The Respondent was unable to provide us with information about the identity of the author of this article.
74. Ms Karaj expressed support on television for the training which she described as a project of "the LGBTI community in collaboration with the Municipality of Tirana and the Ministry of Education." (as reported in the article at [B/214-216]). There has also been training of police officers by LGBT NGOs. We will deal with that in more detail when we come to look at sufficiency of protection below.
75. The UNDP 2017 Report makes the following comment about such initiatives ([B/580]):
- "Many of these activities have been undertaken by civil society organizations. Several legislative reforms have taken place since the first plan, but a wide gap in implementation remains at all levels. This is particularly problematic at the regional and local level, where LGBTI people are subject to various forms of discrimination in their daily life."
76. As to NAP 2016-20, the UNDP 2017 Report describes this as follows:
- "The priorities and objectives outlined in the NPA 2016-2020 are based on needs as prioritised by the LGBTI community itself, as well as on an analysis of gaps and failures in implementation of the 2012-2014 action plan. Expertise for the preparation of the NPA was provided by the Council of Europe's SOGI Unit. The LGBTI NPA 2016-2020 was drafted by the Ministry of Social Welfare and Youth (MoSWY) and approved for implementation by legislation and policy development with the following priorities:
- (i) Safety and protection of rights, and;
  - (ii) Access to services."
77. The PINK Embassy is reported (in the May 2017 CPIN) to have said the following ([B/638]):

“Albania marks another milestone towards advancing the rights of LGBTI community. Today the Albanian Government approved the National Action Plan for LGBTI people in the Republic of Albania for the years 2016-2020. The adoption of this document is a tremendous victory for the LGBTI community since the adoption of the Law on Protection from Discrimination, in early 2010, as the government had not passed many political initiatives in support of human rights of every LGBTI individual in Albania. The national plan foresees a model of change, including measures for legislation, social policy, public administration and services, in order to create a culture of inclusion and openness to diversity and contribute further to the strengthening of the LGBTI community.

PINK Embassy welcomes the adoption of the National Action Plan and wishes to exceptionally thank the Ministry of Social Welfare and Youth, which lobbied and supported this initiative from the first day.

To achieve the goals and objectives of the Plan interventions at several levels are foreseen including legislative developments, policies, aligning with other policies and strategies of inclusion, programming and provision of standardized training of professional staff and service providers.”

78. The 2017 ILGA Enlargement Review ([B158]) draws attention however to the abolition of the Ministry of Social Welfare and Youth following the 2017 elections and calls for urgent clarification of what will happen with the implementation of the NAP following that dissolution. It notes that the mandate of the MSWY has been split between other ministries and also draws attention to implementation being lacking and further improvements being required.
79. The EU 2018 Report makes the following observations about implementation of the 2016-2020 NAP ([B/248]):

“Despite the fact that the Constitution does not include references to sexual orientation and gender identity, Albania’s anti-discrimination legislation prohibits discrimination against **lesbian, gay, bisexual, transgender and intersex (LGBTI) persons**. However, more efforts are needed to protect LGBTI persons from discrimination. An inter-ministerial team responsible for the monitoring of the 2016-2020 National Action Plan for LGBTI Persons in Albania is functional. Police officers, prosecutors and gender focal points of line ministries have been given training on preventing discrimination on the basis of sexual orientation and gender identity. According to LGBTI organisations, the attitude and awareness of the police has improved significantly in recent years. The donor-funded shelter for LGBTI persons has continued to provide care, support and advocacy to homeless LGBTI individuals. During the reporting period, no court rulings in cases related to sexual orientation and gender identity have been made. In addition, public awareness and acceptance of LGBTI persons remain low, particularly in rural areas. Hate speech and discriminatory language continue to be a problem in the media especially online media. On a positive note, the sixth edition of Tirana Gay Pride took place without any incident.”

80. Various organisations have criticised the implementation of the legal framework as follows.

(a) The UNDP 2017 Report at [B/603] notes that:

“Although the institutional environment is changing in positive ways, the effects of legal and policy improvements are not yet visible, because they are not being applied in practice. The lack of enactment of legal and institutional measures shows that the government has endorsed its responsibility to protect the rights of LGBTI people more to satisfy the demands of the international community – and in order to meet the requirements for EU membership in particular – rather than as a civil duty towards LGBTI citizens... Distrust in the judiciary system has forced LGBTI people to almost ignore its existence and not use it to seek redress. This explains the low numbers of reported cases, lack of judicial prosecutions and lack of data on hate crimes. Because LGBTI people know that public employees hold discriminatory attitudes, they do not adopt the means of making a legal complaint against public institutions or employees, despite facing institutional discrimination in education, healthcare, and employment settings. The remarkable work of the NHRI institutions is reduced in its effectiveness by the resistance of institutions that do not follow the PA and CPD recommendations and sanctions.

Failure to recognize discrimination based on SOGI is widespread, because law enforcement officials, judges, and public administration officials are not trained on anti-discrimination. As consequence, LGBTI victims struggle to obtain justice.”

(b) The ILGA Document at [B/212] records:

“With the score of 33% on our Rainbow Map, Albania is not only ahead of most of its neighbours (except Montenegro with 39%), but also a number of EU member states. Overall the legal framework in Albania includes **general guarantees** of respect for human rights, and the human rights of LGBTI people specifically. Furthermore, a **dedicated action plan** for the promotion and protection of the human rights of LGBTI people is in place in Albania and LGBTI activists enjoy strong connections to a number of policy makers and politicians. However, **implementation falls short of the image painted on paper**. Public attitudes remain highly negative, hate speech and discriminatory language continue to be a problem in media coverage and on line, and steps should be taken to introduce legal gender recognition procedures and partnership protection for same-sex couples.”

(c) The ILGA 2017 Review makes similar points in relation to 2016 and also observes ([B/618]):

“Albania is a prime example of the difference between laws on paper and realities experienced by LGBTI people in their daily lives. Further legislative progress was made in 2016, with adoption of an action plan to promote and protect the human rights of LGBTI people, adding to an already comprehensive legal package protecting the human rights of LGBTI people. However, no efforts were made to address pervasive homophobic attitudes in society...”

(d) The ERA Article [B/399] (reporting on awareness education in schools) records:

“While Albania is to be commended for making some positive steps with regards to LGBTI rights, such as the above-mentioned legislation, the training of officials – especially law enforcement agencies and social services – and the recent approval of the National Action Plan, a lot more needs to be done to address pervasive negative attitudes, and lack of proactive measures by institutions in charge of human rights issues and anti-discrimination policies. This situation has left the LGBTI community in a paradoxical state, where by law they are protected, but in practice they are as vulnerable and as discriminated as pre-2010.”

81. The general theme of non-implementation is one repeated by Ms Young, as we have observed. In her response to the written questions posed by the Respondent about her assessment of progress made on governance, law enforcement and protection of human rights between 2014 and 2018, she explains ([B/87]):

“I do believe that there is a very gradual improvement in all these areas. In the area of law this is the most impressive, but it is the implementation of those laws that is so lacking and hence the protection of human rights is only marginally improving in the 4 years to 2018. I see this as inevitable: that laws alone cannot change centuries of traditional social behaviour, and particularly when there is such a lack of education in the rural areas. I have been working for 20 years with the UK charity Balkans Peace Park Project. Our most successful activities have been in the organizing of Summer Programmes, mainly for the children in such villages as Vermosh, Lepushe, Valbona, Thethi and further afield. For some of these children, they have no other schooling throughout the year. I consider that it is inevitable that in such circumstances, traditional law is bound to be retained, as we see in the terrible continuation of bloodfeuds, which force whole families to live in isolation and their children to be prevented from attending school (I could elaborate at great length and with a very large amount of references).”

82. Those views chime with those of some of the NGO community. Ms Young cites an article in which Ms Karaj is said to have commented that “there is a big contrast between the legislative developments and the changes when it comes to the everyday reality of LGBT people.” Mr Kodra’s view as expressed to Ms Young in 2017 was that “little had improved for the lot of LGBT+ individuals even in recent years.” He said that Gay Pride marches were supported by politicians who wanted Albania to join the EU. Ms Young, in her report, makes reference to two blogs relating to the 2018 Gay Pride demonstration which said that despite government promises “no action has been taken to “improve the legal framework of LGBT in particular and minority rights in general” and that “the Rama government has consistently failed to improve the lives of Albanian LGBTI people, blocking several legal reforms drafted with the support of the Council of Europe””.
83. In a joint statement attributed to both Mr Pinderi and Ms Karaj on the occasion of the 2017 Gay (P)ride ([B/770-773], the Albanian government was criticised in an online article for failing over the previous four years to improve the legal framework in relation to LGBT people in spite of initiatives taken by the NGOs and the international community. It is said in the same article that the government had



blocked several legal reforms drafted with support of the Council of Europe. It is not said what those were.

84. In his 2018 statement, Mr Pinderi explains that Albanian politicians “believe that their duty ends when they approve a good law in the Parliament”. He commends the existence of the CPD and records that NGOs have been willing and able to make complaints to that organisation but says that enforcement has “constantly been weak”. This is illustrated by the delay in the appointment of a new Commissioner and the appointment of a person connected with the majority party in power.
85. As recorded at [5.2.1] of the May 2017 CPIN, the office of CPD was established in 2010 and elected by Parliament for a five-year term. It is common ground that there was no CPD in post in the period March 2017 to April 2018. The duties of the CPD include the submission of an annual report and initiation of judicial processes (see [5.2.1] and [5.2.2] of the May 2017 CPIN for a fuller description of the CPD’s duties).
86. The EU 2018 Report ([B/246-7]) refers to the work of the CPD as follows:

“The policy and legal framework on non-discrimination is broadly in line with EU standards. However, the Law on Protection against Discrimination does not address multiple discriminations. Implementation of the legal framework needs to be strengthened through the specialised training of judges and prosecutors. In 2017, the Commissioner for Protection against Discrimination handled 203 cases of alleged discrimination (against 288 in 2015 and 239 in 2016). The Commissioner participated in 59 judicial proceedings (against 37 in 2015 and 45 in 2016) and imposed 13 penalties (against 14 in 2015 and 10 in 2016). Awareness campaigns were organised across the country, but homophobia and anti-gypsyism remain widespread. The number of reported hate-crime cases is very low and data collection on hate crimes is still lacking.”
87. The PA is elected by Parliament for five years. The work of the PA is described in detail at [B/584] in the UNDP 2017 Report. In short “PA is not a decision-making body and does not have executive powers. However, PA investigates complaints from individuals or vulnerable groups who are most at risk of discrimination by public institutions...PA has worked with the media to increase public awareness of LGBTI issues...PA delegates any complaints related to discrimination to the CPD. PA makes recommendations to administrative bodies about the measures they should take for restoration of rights or recommends filing a lawsuit. Where a criminal offence is suspected, PA can recommend a criminal investigation and prosecution. PA can bring cases to the Constitutional Court. PA can follow up on these recommendations and escalate cases to more senior levels where a response is deemed insufficient. The main remedy of the Advocate is the issuance of recommendations to stop the infringement.”
88. The Respondent accepts that the PA has no power of sanction and also recognises that the PA office has been criticised as underfunded and understaffed. Nonetheless, the Respondent points to the PA’s key role of reporting to the Albanian Assembly

annually and the PA's responsibility for promoting and enforcing human rights (see reference to the US State Department report in 2016 at [5.3.3] of the May 2017 CPIN ([B/642])).

### *Corruption in Albania*

89. Ms Young records in her report in detail the history of corruption in Albania. In her response to the Respondent's questions, at [B/82] Ms Young accepts that there are "individuals in the Albanian government with the political will to act decisively in the prevention and fight against corruption and structural reforms testifying to an all-encompassing approach including a wide range of institutions." However, she states that there are "sufficient numbers of members of that government to have acted in ways that do not support those aims". By way of illustration, she draws attention to examples at page [15] of her report which refers to one instance in 2016 (before the last elections) when the opposition party accused the prime minister and interior minister of involvement in corruption and a July 2018 article referring to "two former high officials facing corruption charges and most of the high court found unfit to hold office". The article itself does not appear to be in the documents before us and there is no footnote to help us find it.
90. Ms Young also cites from the USSD 2017 Report which records that "[t]he most significant human rights issues...are pervasive corruptions in all branches of government...Officials, politicians, judges and those with powerful business interests often were able to avoid prosecution." This is a limited extract from the Executive Summary of that report which provides information about improvements in the body of the report to which Ms Young does not refer. Other material in the background evidence provides more detail about the current position.
91. In its EU Conclusions Document, the EU Council "welcomes Albania's steady progress in pursuing reforms related to the five key priorities: public administration reform, reform of the judiciary, fight against corruption, fight against organised crime and protection of human rights, including rights of persons belonging to minorities and property rights" ([B/128]). It states that the vetting process of the Judges "has started to deliver its first tangible results". The document recognises that more still needs to be done in relation to corruption and organised crime, particularly in relation to countering cannabis cultivation and drug trafficking and that more also needs to be done to establish "a solid track record of proactive investigations, prosecutions and convictions in the fight against organised crime and corruption." Overall though, as noted at [B/130], the Council responds positively to the progress which Albania has made towards opening accession negotiations in June 2019.
92. The EU 2018 Report also provides concrete figures in relation to investigations, prosecution and convictions in the fight against corruption ([B/240]). These figures include convictions against prosecutors and judges. When Ms Young was asked to comment on these figures during her oral evidence, she said that she could see what

they purported to show but did not accept that this reflected the reality of the situation. We have already referred to this as an example of where we had concerns about Ms Young's objectivity.

93. Ms Young also refers in her report to other reports which she says, "give a very clear picture of an abysmal judicial system riven by corruption, that still exists in Albania today." Ms Young accepts, however, that the vetting system has begun in relation to Judges. By reference to the opinion of "a lawyer colleague" (unnamed with no particulars), she says that the vetting law is vague, "drafted by foreigners", "badly translated", "not sufficiently thought through" and that those conducting the vetting "are not the best". Ms Young's lawyer colleague says that the process has been slow, that only one in ten Judges have passed and "not a lot" have gone through the process.
94. The EU 2018 Report ([B/218-324] records that "the judiciary of Albania is currently undergoing a comprehensive and thorough transitional re-evaluation process (vetting)" which "is delivering the first tangible results". Ms Young agreed in her oral evidence that the vetting process was helpful but said that the evidence she had seen showed only that the process was going to happen and not that it had begun, and she queried "the tangible results". She also said that only one judge had so far been vetted but she accepted in re-examination that this was not correct. Her final position was that "[t]here are not yet enough judges and prosecutors to have been successfully vetted" ([B/84]). She does though add a reference to a more positive article published in the Financial Times in June 2018 which notes that "[w]e believe the Albania model, as it is becoming known, is working and will be successful. Step by step, by combining far-reaching structural changes with operational collaboration on fighting organised crime and cleansing of the judiciary, confidence in the rule of law is being built. Where once citizens might have paid any price to avoid going to court, soon they will be able to expect impartial adjudication and justice."
95. Ms Young also refers to the US State Department report of 2015 and records the view there expressed ([B/32]):

"Corruption was a problem among police, and authorities took measures to combat it. Although the government's internal Control Service investigated and referred for prosecution a significantly higher number of police officers during the years than in 2013, courts convicted few of them..."

The Albanian State Police Corruption Section investigated corruption cases. The section had a limited capacity for undercover investigations and surveillance hampering its investigation."

She points in her report to the acceptance in the May 2017 CPIN that "while the government had mechanisms to investigate and punish abuse and corruption, police corruption remained a problem." ([B/32]). She also draws attention to the July 2017 CPIN ([B/33]) which states:

[9.2.2] Police did not always enforce the law equally. Personal associations, political or criminal connections, poor infrastructure, lack of equipment or inadequate supervision often influenced enforcement of laws. Low salaries, poor motivation and leadership, and a lack of diversity in the workforce contributed to continued corruption and unprofessional behaviour. Impunity remained a serious problem, although the government made greater efforts to address it. Police corruption was a problem.”

We deal further with corruption within the police when we consider sufficiency of protection below.

### *Societal Attitudes*

96. Ms Young explains in her report at [B/24] that, despite the legislative reforms, Albania “is still a very homophobic society. In the patriarchal, even macho society of Albania, the police are the least likely to condone homosexuality and support LGBT+ individuals”. She refers to a written exchange which she had with Mr Kodra of OMSA in 2016 in which he said that “legislation is often not strictly enforced. Same-sex civil unions are still illegal, as well as joint adoptions by same-sex couples and the right to change one’s legal gender.” He went on to say that:

“There exists a large gap in LGBT representation within the political structure and government officials have been at times openly hostile towards LGBT people. Generally speaking, mainstream society knows little about the LGBT community and hold homophobic and transphobic views about LGBT people. A number of politicians in Albania feel pressure from the European Union to pass more inclusive legislations as a building block towards the path to join the European Union. However, many of these politicians will not come out to criticize extremists and discrimination against the LGBT community.”

97. At [B/27], Ms Young quotes from the May 2017 CPIN which records what is said in ERA’s April 2016 report which she accepts reflects “a slight shift” in the public’s perception of homosexuality:

“According to ERA’s April 2016 report: ‘Albanian LGBTI individuals continue to experience discrimination from individuals as well as institutions. Public visibility of LGBTI individuals continues to remain very low, even though several individuals and activists have spoken up openly about their sexual orientation and gender identity in media and public forums. ‘Since 2010 with the adoption of the non-discrimination law and the organized work of LGBT CSO’s the situation has changed drastically. Public debate over this topic has been very present and Albanian government has made significant efforts in the inclusion and protection of LGBT people. ‘Despite these changes, homophobic and transphobic sentiments remain very high and a culture of heteronormativity and patriarchy is still pervasive. High ranking politicians have often made scandalous remarks against LGBT people. Following reactions and recommendations from civil society, government officials and equality bodies however, cases of hate speech from high ranking officials in the country have been much rarer.’”

She said in her oral evidence that there was greater societal awareness of homosexuality, but she said that this “doesn’t make it positive. It is just awareness.”

98. As Ms Young points out in the passage immediately following, a survey carried out in the Western Balkans in 2015 on attitudes towards LGBTI people, as reported by ILGA-Europe in its 2016 annual report concluded that:

“42% of the general public said that they would try to help their son or daughter find a cure if they found out that their child was not heterosexual. ‘58% said they would not vote for a political party that championed the rights of LGBTI people. ‘76% of the LGBTI people surveyed in Albania had been verbally harassed or abused because of their sexual orientation or gender identity. ‘32% of the LGBTI people surveyed in Albania had suffered physical violence because of their sexual orientation or gender identity. ‘76% of the LGBTI people surveyed in Albania felt that Pride parades had improved the position of the LGBTI community in society.”

99. When Ms Young was asked in the written questions what she understood to be meant by “the improvements in both legal and attitudinal issues” referred to by Ms Hysa of Aleanca during their meeting, she replied that “[m]y understanding of this is that there is a *very slow* impetus towards change in understanding the issues and needs of the LGBTI community, and that the Aleanca organization is promoting this impetus for change. But it is against a backdrop of tremendous aggressive denial by the general, especially the tradition population in the rural areas” ([B/90]).

100. Mr Hazizaj, Director of the PINK Embassy in his October interview expresses the view that:

“the awareness for and hence the acceptance of LGBT issues is increasing because we provide people with information. They see our events, learn about them in school or watch them on TV. They are constantly exposed to our work so to speak. All the same, events such as Berlin Pride would be too extreme. This has nothing to do with the LGBT community but with the fact that Albania is a more traditional country. When it comes to sexuality, people are a bit more reserved. We must respect that and find a common framework that does not curtail our rights either.”

101. Mr Hazizaj also compares the Albanian Gay Pride events and those of countries such as Germany; he accepts that it would not be acceptable for those attending to wear “loud, gaudy clothes” and that there might be trouble if they did. However, he points to the development of the Gay Pride events. He says that the first was “quite modest” and confined to the city centre in Tirana. The second, by contrast, spread across the entire city. He said amongst all those in the offices and shops in that area, “there was not a single person who insulted or mocked us. This means that, at least in Tirana, there is a certain level of acceptance.”

102. A document published by the PINK Embassy in June 2018 at [B/140-142] however paints a less rosy picture. It reports on the results of a survey of teachers carried out in 2016-17 and describes “some alarming attitudes”. 47% of teachers said that they had enough information about LGBTI rights. However, 66% of them said that they

would stay silent if faced with bullying against LGBTI adolescents. 34% said that they had witnessed discrimination in their schools. 70% of teachers surveyed said that they would not support their own child if he/she were LGBTI and 70% said they would not even accept the sexual orientation or gender identity of their own child in that situation. 9.3% of teachers said that they would not accept LGBTI persons in their classroom, 12% said that being LGBTI is a sickness and 4% said that being LGBTI should be prohibited by law. 11.3% blamed the internet for influencing sexuality and gender identity. The PINK Embassy recommended to the Ministry of Education a special curriculum for information and training of teachers and the preparation of a code of conduct for all teachers to protect “children and adolescents from violence, abuse, harassment, bullying and discrimination.” It is not clear whether that survey pre-dates the awareness training carried out by the NGOs to which we refer above.

103. Mr Pinderi also gives examples of Members of Parliament making homophobic or other derogatory remarks about LGBT individuals in his 2018 statement (See also [B/398]). The ILGA 2017 Review refers to one such case in which the PINK Embassy filed a complaint with the CPD and formal proceedings were opened. It was noted however that no decision or recommendation had been issued by the end of 2016 ([B/367]). Ms Hysa of Aleanca was also of the view that there had been improvements in both the law and attitudes towards LGBT+ individuals between 2009 and 2012 but “little has changed for the better” since then.
104. Mr Chelvan submitted that, due to the macho societal attitudes in Albania, gay men are required to “prove straight” to demonstrate to others that they are not gay. This submission receives some support in the UNDP 2017 Report at [B/591] as follows:

“In Albania, rigid gender stereotypes and cultural expectations mean that men and women are expected to conform to rather inflexible ideas of masculinity and femininity in their behaviour and appearance. Deviations from these binary gender stereotypes are strongly discouraged and considered by some to be morally wrong. As a patriarchal society, there are high levels of social disapproval for any form of sexuality falling outside of heterosexual norms.”
105. Altin Hazizaj of the PINK Embassy is also reported by Ms Young to have told her that “basically those he has worked with belong to three categories: (1) Older LGBT individuals (45 years and over), live double lives, some married with children, their homosexuality is kept hidden (2) Some are well educated, they never come out, but meet in bars sympathetic to gays (mostly aged 30-45) (3) Teenagers and into their twenties who come out first at sex workers at gay bars.”
106. That some gay men may marry to seek to conceal their sexuality is supported by what is said by Ms Cela, Director of STREHA. Ms Hysa, of Aleanca, also told Ms Young that many of those who participate in Gay Pride events feel the need to wear masks to hide their identity. That is supported to some extent by the picture which accompanies the publication of Mr Hazizaj’s interview in October 2018 where some of those attending are wearing masks.

## *Role of LGBTI NGOs*

107. There are five NGOs about who we received some information: OMSA, Pro-LGBT, Alliance LGBT (also known as Aleanca), STREHA, and PINK Embassy. We have provided above a list of those individuals and the organisations to which they belong which includes also a reference to the nature and degree of interaction which Ms Young has had with those individuals.
108. The evidence shows that the LGBTI NGOs are all active in the promotion of their own cause.
109. The 2017 ILGA Enlargement Review ([B/151-159]) draws attention to the part which the LGBT NGOs played in the period leading up to the Albanian elections in 2017. They gained significant media coverage to raise awareness among the public and politicians and to inform LGBT individuals of those candidates who held homophobic views.
110. A regional conference was held in May 2018 between the Council of Europe, other international organisations, local organisations and Albanian institutions to consider the preventing and combating of discrimination based on sexual orientation and gender identity in Albania ([B/147-148]). The conference recognised the need to implement laws and to fight hate crime. It also recognised the part that the LGBTI community plays in gaining respect for the rights of LGBTI individuals. The online report of this conference also draws attention to the training of the police, a topic with which we deal separately below.
111. The importance of the LGBT NGOs is also recognised by the UNDP 2017 Report (B/587):

“LGBTI civil society organizations are a crucial component of the equality and human rights architecture in Albania. There are four active LGBTI people’s organizations: Alliance LGBT, Pro LGBT, PINK Embassy and OMSA. They voice LGBTI’s people’s needs and address individual and group discrimination and human rights violations. LGBTI organizations act as advocates for LGBTI people. They speak on their behalf and represent them in public institutions. They play a valuable role as watchdogs on the implementation of policy and legislation. They have a strong partnership with the human rights and equality statutory bodies of the PA and CPD. Through advocacy and lobbying they have influenced the amendment of laws and policy design in the area of human rights and anti-discrimination for LGBTI people. They have been very active in raising awareness and promoting LGBTI human rights. Other human rights organizations have been supporting the cause of LGBTI people as well.”
112. An online report published in May 2018 reports on the launch of the “PRIDE project” by Aleanca and Pro LGBT ([B/149-150]). “PRIDE” stands for “Promoting Rights, Inclusiveness, Dignity and Equality for LGBT in Albania”. The aim of the project is said to be on “promoting acceptance, inclusion and protection of the LGBTI minority

in rural and urban Albania. Particular focus will be on protecting risked LGBT youth, promoting respect for the fundamental rights of LGBT people, and strengthening the voice of LGBT people in the media". The three specific objectives are set out as:

- “1. Strengthen the capacity of LGBT organizations and increase their ability to improve the acceptance of the LGBTI community by the general population.
2. To increase access to protection and counselling support, as well as access to employment opportunities for the LGBT community, with a special focus on ensuring access to basic services for at-risk young LGBT.
3. To promote a more positive image of the LGBT community and improve their acceptance by the general population, both through media campaigns and offline activities.”

113. The organisation of the Gay Pride events is further illustration of the raising of awareness of LGBT rights by the NGOs. According to the 2017 ILGA Enlargement Review, the 6<sup>th</sup> Tirana Gay (P)Ride was attended by 200 LGBTI community members, civil society activists from Albania and the region and other supporters of the cause. Mr Chelvan drew attention however to the reduced numbers attending the 2018 Gay Pride bike ride in May reported at [B/184]. Unfortunately, it is not clear whether the reference to “60 members of LGBT and supporters from Kosovo and Macedonia” is to all those attending or only to sixty members of LGBT as well as supporters from those countries. Neither party was able to point us to any document confirming the precise numbers. We accept that the number in view in the picture accompanying Mr Hazizaj’s October interview is quite small. However, we are still not entirely clear whether the Gay Pride Bike Ride is the only Gay Pride event. Mr Hazizaj refers to two events annually in his October interview.

114. Asked in his October interview whether the NGOs’ work has made a difference, Mr Hazizaj says:

“Absolutely! In general, you can say that the LBGT community is more accepted and viewed in a more positive light. When we started off in 2010, you could hardly get more than five people in a room to discuss our rights. Today, there are government officials who understand that it is their duty to come here, listen and be active. If you told someone in 2010 that you were gay or lesbian, people would have treated you very badly because they were misinformed. For example, many believed that gays were paedophiles. The information we put out is making an impact now. Our relations with the police have also improved. In the past, gays were often randomly accused of all kinds of misdemeanours and arrested. Today we collaborate with the police academy. We train officers to respect our rights and protect our people. Because hate that is related to sexual orientation is a criminal offence and must be punished.”

115. Mr Pinderi records that he has “10 years of experience as the leading LGBT+ human rights activist” ([B/325]). Despite that accolade coming from Mr Pinderi himself in his 2018 statement, Ms Young sought in her evidence to downplay his public profile by suggesting that he, his NGO and other LGBT NGOs were secretive about their



work to avoid the risk of violence. We can find no support for that view in the evidence; indeed, there are a number of articles which show very clearly that those involved with the LGBTI NGOs are seeking to raise awareness of their cause by media appearances, organising the Gay Pride events and training of key groups of officials.

116. We have made mention of Ms Young's expansion on her oral evidence when asked questions after the conclusion of the hearing. She sought to suggest there that, except in the case of the PINK Embassy, she met the representatives of the NGOs outside their offices at their request because they were concerned about protection of those benefitting from their help and advice. We accept that is so in relation to the STREHA shelter. An article relating to the shelter records the concern that it would be a target for "arson and havoc". That a shelter might be concerned about targeting because it protects those fleeing domestic violence is unsurprising. However, we do not accept the gloss which Ms Young now seeks to put on the fact of the meetings outside the NGO offices in relation to the other organisations although we do consider the views of their representatives in relation to risk when we deal with that issue below. Ms Young accepts, following production of documents by the Respondent after the end of the hearing, that the address of PINK Embassy is shown on its website.
117. In her post-hearing answers, Ms Young also makes adverse observations about the work done by PINK Embassy. She seeks to modify her oral evidence by suggesting that there are no statistics to support the evidence about that work and that she "regrets" not having asked for those. She also criticises the survey conducted by PINK Embassy of teachers in Albania on the basis that the numbers surveyed are low (200). None of this was mentioned in either Ms Young's report or her oral evidence. These comments further underline Ms Young's own failure to ask exploratory questions of her interlocutors when she met them. Ms Young now seeks to distance her views from those of the PINK Embassy, we infer possibly because of the positive tone adopted by Mr Hazizaj in his October interview. Although her post-hearing evidence is not inconsistent with her oral evidence that she was not made to feel welcome by Mr Hazizaj when she visited the NGO offices, she now adds that this may be because she believes there to be tensions between PINK Embassy and the other NGOs. This is yet another example of Ms Young expressing unsourced views. We are unable to find any indication of such a rift in the evidence we have seen.

***Findings on the Legislative Framework, Implementation, Corruption, Societal Attitudes and the Role of the LGBTI NGOs***

118. Drawing together the evidence in relation to the general societal, cultural and legislative background in Albania, we have come to the following findings and conclusions.
119. There is a long history of corruption in Albania, within all the State institutions. The evidence, particularly that emanating from the EU indicates that steady progress is

being made in the fight against it. In particular, the vetting of judges is underway (contrary to Ms Young's initial evidence) and tangible results are being seen already. We deal specifically with corruption within the police service under the separate heading of "Sufficiency of Protection" below. Taking all the evidence into account, it would however be premature to suggest that the problem of corruption in state institutions has been altogether eradicated.

120. Albania has taken significant steps in developing legislative protection for LGBTI individuals. There remains concern over its implementation as recognised in a number of reports. As a positive step, training has been undertaken in partnership with NGOs representing LGBTI individuals within schools nationwide and of the police force, in Tirana in particular. This is relevant to our concerns under the heading of "Sufficiency of Protection". Legislation includes the setting up of an Ombudsman organisation (the PA) and a Commissioner with particular responsibility for protecting against discrimination (CPD). Whilst the powers of those organisations may be limited, they are able to investigate complaints, issue sanctions (in the case of CPD), take steps to raise awareness and make recommendations to central government. The Albanian government has also set in place two NAPs designed to put in place policies to protect the rights of LGBTI individuals.
121. The NGOs advocating for LGBTI rights have a major influence on the implementation of reforms. The evidence shows they "play a valuable role as watchdogs on the implementation of policy and legislation" (UNDP 2017 Report). Working with government and particularly CPD and PA, the organisations raise awareness of issues affecting LGBTI, take forward complaints including on behalf of affected individuals, deliver training of key State workers and raise awareness of LGBTI issues within Albanian society through for example, media articles and the organising of Gay Pride events.
122. We recognise however that Albania still has not reached the position of true equality for LGBTI individuals. It is presently scored at 33% on ILGA's Rainbow Map "ahead of most of its neighbours...but also a number of EU member states." Homophobia remains a feature of society in Albania. Surveys carried out among the general populace and of teachers in 2015-2017 produced concerning results. It is clear that Albanian society still has some way to go in its acceptance of LGBTI individuals and particularly openly gay men. We do not however accept Ms Young's assertions that it will take generations for that to change; the evidence about training in schools has produced negative but also positive reaction. Tirana has a more liberal outlook. The Director of PINK Embassy acknowledges that awareness and acceptance is increasing.

123. We accept also that there is evidence of some politicians and persons in authority making homophobic or other derogatory remarks. Some of those individuals are now described as former ministers. In other cases, complaints have been made to CPD although it is not clear what has happened to those complaints. The problem is not though of sufficient frequency or intensity to give rise to a suggestion of State sponsored antagonism towards the LGBTI community.
124. Against that background, we turn now to the further aspects which we are required to consider.

**B: Situation Faced by an Openly Gay Man in Tirana**

*Risk of Harm to Openly Gay Men in Tirana*

125. The Respondent's position is that there is not in general a risk to the life of or risk of sufficiently serious harm to an openly gay returnee on return to Albania. The Appellant's case is that the risk still exists, both outside the family and within the family.
126. The acceptance that the Appellant suffered extreme ill-treatment in his home area in 2016 is sufficiently recent in time to be relevant to risk on return. That occurred in Has to where the Respondent accepts the Appellant cannot be returned. The Appellant lived thereafter for about four months in Tirana but, on his evidence, not as an openly gay man. As such, his own experience in this regard does not assist our consideration of the risk based on the expert and background evidence, save that we take into account that his own perceptions of the circumstances for openly gay men in Tirana were such that he chose not to live openly.
127. In Ms Young's opinion "[a]ll practising LGBT+ individuals in Albania are at considerable risk for their personal safety as well as for their jobs and their homes" [B/19]. She says that harassment by the police is "frequent". However, those views are said to be founded on a 2007 and 2008 source and can therefore be given only limited weight.
128. She has referred in her report to an interview published in 2013 with Mr Pinderi which deals with violence against gay men ([B/21]). He says this:

"..Then, regarding the violence. I have a mixed feeling. Because on the one hand yes we had of course some problems - it was minor problem last year actually the violence."

[those comments being related to an attack on the Gay Pride Bike Ride in 2012]

"What we can say about the violence is that I believe it's a hidden violence...what we have is non-reported violence especially within families.

I'm not saying that there is no violence. I am saying that the violence is so sophisticated, that it's a financial violence for instance. When the parents find out about their children, the first thing they do is like, okay, we won't give you any money,

we're not paying anymore for your university and if you want to leave the house we will not pay you rent for another house, and we will not let you get a job in this city. We have had cases of violence especially from brothers against their younger brothers, extreme violence sometimes and the problem is that the community is quite unresponsive and not willing to report that violence. And I can understand it because we don't have enough infrastructure; how to address that kind of violence. So yeah, this is now the general situation."

129. In her answers to the Respondent's written questions (prior to finalisation of her report), Ms Young mentions a warning issued by the Dutch Embassy to avoid the Gay Pride event in 2017 due to security concerns ([B/90]). Those concerns appear to arise from an intended demonstration on the same day by those opposed to LGBT rights ([B/182]). She also refers to the experience of the American Ambassador to Albania who attended the Gay Pride event in 2015 (and not as Ms Young suggests 2018: his quote begins with reference to the event being "three years ago"). He says that he was:

"...shocked by the lack of empathy and the ignorance of some citizens. Although there was a big protection from the Police someone hit with an egg that almost fell on the head of a 4 year boy who was with his father at the pride. One of my colleagues at the embassy was hit with a tomato. They told me it was far better than the threats of previous years".

Ms Young accepted in her evidence that there have been no attacks on recent Gay Pride events with those limited exceptions.

130. In his October 2018 interview, Mr Hazizaj refers to attacks on the Pride Parade. He says this:

"The Pride Parade has never been attacked and there haven't been any negative incidents - that is the most important thing. There was just one minor incident during P(ride) 2013, one of Tirana's two rainbow parades, to which many people came by bike. Someone threw smoke bombs at participants who were sitting in a café after the parade. There was, however, never a thorough investigation as to whether there had been a connection. But there is a lot of hate in the social networks. Many politicians oppose these types of events and try to turn people against us. They also know that the media jump on this topic, and so they specifically take advantage of this fact to draw attention away from other topics. They want to hold us responsible for things that go wrong and start discussions we haven't even asked for..."

131. We take note of the reference in this article to two rainbow parades in Tirana and that the Gay Pride Parade has never been attacked, casting some doubt on what we were told that the Gay Pride Bike Ride is the same thing as the Gay Pride Parade.

132. Ms Young opines that Tirana is the "only town in Albania where any LGBT+ person could live free from persecution and possible attack, and that even there it would only be possible to live *openly* LGBT+, in *certain* more tolerant areas". When asked about this, she said that the only area which she considered "safe" in this sense is the

area where the “gay-friendly bars” and, so far as she knew their location, where the LGBT NGOs are situated. That is an area which she referred to as the “Blloku”. It is the area formerly occupied by Enver Hoxha and his communist party members, a small district within Tirana. A map was provided at the hearing on which she indicated its location. In her further responses after the hearing, she explained that she is “still not entirely clear of its exact perimeter, but it certainly covers the areas that I indicated on the map of Tirana”. The area to which she pointed during her oral evidence is one surrounded by some four streets. Mr Thomann accepted that, if Ms Young’s evidence about this were adopted, so that an openly gay man could only live without risk in that confined area, it would not be reasonable to expect him to relocate to Tirana. Ms Young did not provide a source for either the comment in her report or what she said in oral evidence or in her further responses.

133. Mr Pinderi’s experiences of violence against gay men are relevant, particularly as he was openly gay for some considerable time whilst in Albania, is and was whilst in Albania in a relationship with another man and was (and still is) a leader of a LGBT NGO in Albania.
134. Ms Young herself relies on what she was told by Mr Pinderi and Mr Kodra about incidents of violence. In spite of that, we are unable to find specific examples to illustrate Ms Young’s view that there continues to be a real risk to gay men, even in Tirana. When asked about this in re-examination, she said that “anecdotally” she was aware of incidents. A British woman running “Balkanista” had told her of some but she had not taken note of them because she was not in touch with the people concerned. She also said in her evidence in chief when asked about the source of her view that gay men in Tirana would risk violence on the streets from gangs, that she was “not sure [she] supplied them”. She said that she was given examples by Mr Pinderi and Mr Kodra, but we were not taken to any examples save those referred to by Mr Pinderi.
135. In his 2018 statement ([B/333]), Mr Pinderi refers to “increasing violence” to LGBT+ individuals within the home and at school. He says that this shows a risk to their lives in those places “as much as they risk in streets”. He says that he provides two concrete examples but only one is given. It is of a friend of Mr Pinderi who committed suicide in February 2018 because of his “problematic relationship with his family members”. Mr Pinderi goes on however to say that “[i]n my daily work and also in several documented cases I have seen that LGBTQ+ community is constantly facing physical violence because of their gender identity and/or sexual orientation. Those members of our community who cannot hide their non-binary gender identity or sexual orientation, are disproportionately affected not only by street violence, but also by domestic violence, unemployment and refusal to offer equal rights and opportunities.”
136. Mr Pinderi provides further detail of domestic violence. He says that this remains “the biggest challenge” both outside and within Tirana. He points to the 67 young

people helped by the LGBT shelter in Tirana since its inception in 2014. He goes on to say that:

“Usually the violence came from family members such as older brothers and even from fathers and mothers. At the residential shelter we had to deal in 2015 even with the case of a 16 years old boy that was disowned by his parents who signed a declaration in front of the public notary to give up their parenthood responsibilities towards their child.”

137. In terms of the violence which Mr Pinderi and his partner faced whilst in Albania, the following examples are provided in his statement:

“I could no longer take public transportation and was hesitant to go out shopping or to restaurants as people would recognise me and confront me, often calling me “immoral” and warning “that God would punish me”.

I received numerous messages on my personal Facebook account threatening to hang me, or saying, “Hitler should wake up and take care of people like me.” Others threatened to burn me with acid.

Five times, people shattered the mirrors on my car during the night. Each time, it was only my car that was vandalized – all the other cars in the neighbourhood were left alone.

I was once with Xheni Karaj, my soulmate, comrade in our cause and colleague and waiting our turn at a gas station in Pogradec, my hometown in Albania, when a man confronted me. He called me a faggot and told me to stop saying on television that I was raised in Pogradec, as it brought shame to the town. He grabbed me by the throat, spit on me and told us to leave.

A few weeks later, I heard from others in town that he had accidentally killed himself with an assault rifle.

...

Being openly gay activists and a couple as well, our lives were in danger. By the time we left, we were receiving dozens of death threats on social media every day – threats we couldn’t ignore. The false sense of security we had built around us suddenly started to crumble.

After years as an LGBT activist in Albania, I realized I had done all I could to change myself and my country, and there was nothing more I could do without putting myself and my family at serious risk. It was time for a change.”

138. When questioned specifically about Mr Pinderi’s experiences in Albania, Ms Young accepted that, even in his 2018 statement, he had not described day to day incidents of street violence. She pointed out though that he had to leave Albania because he was “in fear of much worse”. She did not accept that the fact that Mr Pinderi had lived in Albania as an openly gay man for many years without incident indicated that there was no real risk for such a person and suggested that the NGO movement in 2013 (when he made his comments about violence which we have noted above) was “underground” or “secretive”. We note that this assertion is not supported by Mr Pinderi’s own evidence which refers to the Gay Pride events before 2013.

139. Ms Hysa (the representative from Aleanca with whom Ms Young met) informed her that the organisation “faced a great deal of antagonism”. Ms Young confirmed however that Ms Hysa did not particularise any incidents of violence.
140. In the HRW Article in November 2017 ([B/606-7]), the psychologist from STREHA is cited as saying that the exact location of the shelter is not published or available information because they “want to avoid arson and havoc”. We have already commented on the different position for a shelter provided for those who have fallen victim to domestic violence. The article reports comments from two young men then staying at the shelter. One had suffered physical attack from his father and was then evicted from the home. He ended up as a sex worker to survive before being referred to the shelter by an acquaintance. The other had a similar experience but had been assisted by STREHA to find an apartment and a job as a journalist. He returned to STREHA to help as a volunteer.
141. We were told by Ms Young based on what she was told by the Director of STREHA, that they “constantly” had to turn away young people. Mr Hazizaj, in his October 2018 interview, when asked about the need for LGBT individuals to have recourse to the STREHA shelter, casts some doubt on the level of violence within families:

“Fortunately, very few young people need to resort to this option. When adolescents or young adults come out to their families, in most cases the issue is off the table after two or four weeks. That does not necessarily mean it is solved. Most families go through several crises particularly during the first week...It’s not that they [the parents] are overly worried about their children’s sexuality but rather about what society will do to their children. The biggest fear is that their son or daughter will be bullied by other children and harassed by their teachers. So it’s more a concern for happiness, human rights and protection from violence. That’s a legitimate concern that probably all parents have.”

142. At [B/561-563], there is an article dated January 2018 concerning a young, bisexual man named (for the purposes of the article) “Alesio”. He has not disclosed his sexuality to his family and lives in Tirana where he “leads a relatively restricted existence” so that he is not conspicuous in order that his sexuality is not suspected or noted upon. He says this about the risk:

“In the past, I would encounter discrimination in the street. People have said offensive things and harassed me. So now I just keep myself to myself and try not to exaggerate in the way I dress. Because whenever I dress differently, or have my eyebrows done, I know I will get it from people. There are many young men in Albania who would like to dress well and in style and for this reason alone, people immediately assume they are gay, even though they may not be. That is why I lead a secret life and cannot come out openly about my real sexual orientation. Not that I care much about what other people say. But I still don’t want them to pry into my life. I don’t want to be one of those who is abused or verbally attacked.”

143. In terms of reports of violence, according to the ILGA 2017 Review, (by reference to Aleanca’s 2016 report), Aleanca received reports of 523 cases of bullying in that year.

Only five of those cases were reported to the authorities and of those who reported them, four out of five said that they faced hostility from the police. Aleanca also received eight reports of physical attacks on LGBT people and twelve incidents of domestic violence against such individuals during 2016 ([B/620]). Ms Young did not accept that the low levels of physical violence reported to Aleanca as recorded in the ILGA 2017 Review ([B/620]) were indicative of a lack of real risk. She insisted instead that the report of eight incidents of physical violence and twelve incidents of domestic violence was indicative of an unwillingness to report. Such reports are to a NGO and not the police and there were over 500 reports of bullying made to the NGO in the same period.

144. The Helsinki Committee Article at [B/622-23] says that:

“Citizens belonging to this community face a series of problems that impede the effective and full exercise of their rights. Part of them [sic] is not accepted as such by their family or society, faced with denigrating prejudice and multi-faced discrimination. In some cases, members of this community are the victims of hate, verbal or physical violence, in public places or domestic violence. Lack of housing for individuals in need who are not accepted by their families, difficulties in employment or lack of quality psycho-social services are some of the other problems that the community faces.”

The document goes on to speak of the difficulties faced by those facing gender identity discrimination.

145. The UNDP 2017 Report ([B/592]) says this about violence against LGBTI people:

“[4.3] Gender norms are very persistent. Non-conformity with mainstream gender norms by LGBTI people can provoke verbal abuse, physical attacks and harassment from family members and in public places. There is no safe place where LGBTI people know that they can be free from fear of violence and abuse, except for in each other’s company and when receiving support from LGBTI people’s organizations...High levels of homophobia cause fear of persecution and insecurity amongst LGBTI people.”

The report goes on to observe, based on testimony from 2014, that LGBTI victims do not report homophobic crimes because of fear of extortion and lack of trust in the reception they will be given by the police.

146. When dealing with the position of gay men in particular, the report records the following ([B/593]):

“Gendered cultural practices are very persistent and cause harm to gay people because they provoke verbal abuse, physical attacks and harassment in the domestic context and in public places. In 2011, a gay couple reported physical violence and death threats from one of their brothers to the police. However, instead of receiving protection they were subject to discrimination by the police officers who insulted them because of their sexual orientation. The couple was kept in a cell for 10 hours and considered to be guilty for bothering their families and neighbours. After their



complaint, PINK Embassy reported the incident to the CPD which opened an investigation. In 2013, a 19-year old student reported that he had been evicted from the apartment he was renting because his landlord found out he was gay."

147. We refer also to the May 2017 CPIN. At [2.3.12] ([B/629]), a general summary concerning violence towards LGBT individuals provides:

"There is no reliable data on hate crime and it is believed that many cases go unreported. Almost all violence in public is targeted towards men who are, as one source describes, stereotypically gay and towards transgender people. However, most ill-treatment occurs within the family - often involving psychological violence from parents who feel that their child might be gay or lesbian."

148. Reference is made in the report at [6.4.1] ([B/652]) to the 2015 report of the European Commission against Racism and Intolerance ("ECRI") as follows:

"There is no data from the authorities on hate crime towards LGBT persons. However, reports from the CPD, the EU and civil society show that there are regular incidents of homo-transphobic violence. For 2011, the NGO Pink Embassy reported to the OSCE one arson attack against a house inhabited by five transgender people and an assault against a transgender person resulting in serious injury. For 2012, the OSCE received reports of a group attack on 14 May with explosives used against participants in the first ever Pride event in Tirana. Fortunately it did not result in serious harm and the subsequent public debate led to amendments in the CC. Concerning the same year the NGO Pink Embassy reported three cases of physical assault, including one by a group. Civil society and the CPD also refer to several cases of violence against young LGBT people by members of their family. In addition, ECRI was informed of an attack on 25 February 2013 on two transgender persons with a glass bottle and other sharp objects. Moreover, the police refused to consider an attack with tear gas on LGBT activists on 17 May 2013 as a hate crime, on the ground that no participant had been physically injured."

149. The May 2017 CPIN also refers at [B/652] to an Albania Helsinki Committee 2015 report which stated that:

"During this year there were no cases of violence or serious violations of life and health of persons belonging to the LGBT community, however the awareness of the general public regarding the specifics of the citizens of this community remains low, due to the taboos that exist and the minimal treatment of the problem at a social level. During 2015 the AHC has received only one complaint and request for legal assistance from the community. The complaint related to alleged discrimination of a person from Fier, who was living in a shelter in Tirana, but at the same time was wanted by the police. AHC carefully followed the case and the claim resulted [to be] not true."

150. We take account of the view of the PA in May 2016 cited at [6.4.5] that:

"violence against the LGBT community is still a present phenomenon. Members of this community in many cases face violence in domestic and public environments. Albania does not yet collect data on violence related to sexual orientation and this remains a problem."

That is backed up by what is said at [6.5.4] in a contribution from ERA and the LGBT NGOs in Albania that:

“Domestic violence remains an issue for the LGBTI community. Cases of domestic violence are very common. In 2015, 15 cases of domestic violence were reported to Aleanca, mostly involving psychological violence from parents who felt that their child might be gay or lesbian. In six cases, members of the community reported that they had experienced physical violence because their family had found out they were LGBT. Aleanca has supported victims of such violence, either through providing psychological support or by providing shelter at STREHA. In several cases, Aleanca also collaborated with other NGOs that operate in Albania.”

151. Among the recommendations for amendment to the text of an earlier COI report, Dr Enkeleida Tahiraj, in the ICI Report at [B/695-7], suggested that the Home Office should make reference to the lack of reliable statistics emanating from the Albanian authorities because statistics were not collected or published “to a meaningful level”. He noted that “[t]he most reliable data comes from reported incidents to LGBTI NGOs” and that it was not that there were no hate motivated crimes, but the level was unknown because they were not being measured. The Home Office accepted that recommended amendment. Such amendments are reflected in the text of the May 2017 CPIN at [2.3.12] and [6.4.1] which we have set out above.
152. Our attention was also drawn to the incidents of violence referred to by Dr Tahiraj at [B/705]. The Home Office also accepted the recent sources and those are set out at [6.4.1] cited above. The examples date back to 2011 and 2012. In addition, Dr Tahiraj refers to a Historia IME link which states that “PINK Embassy and ‘Historia IME’ reported several individual cases of violence and discrimination throughout the year 2014, including instances where LGBTI people were removed from their familial home, left family home because of fear of being killed by family members, had their resources cut by unsupportive family members or were sexually abused. Some victims sought to leave Albania”. That passage does not appear in the May 2017 CPIN nor does that passage include the numbers of incidents, their details and the split between violence and discrimination or between public and domestic violence.
153. The Appellant relies on the Home Office Statistics in relation to UK asylum claims based on sexual orientation ([B608-617]). We take these into account including the limitations of the data expressed at [B609-610], in particular that the identifier of sexual orientation may have been wrongly or inconsistently applied by caseworkers, that the data does not reflect a confirmed or definite status, that the sexual orientation claim may not be the sole basis of the claim and that the basis of the appeal or its outcome is not necessarily the individual’s sexual orientation. We remind ourselves that protection claims turn on their own facts and even if reliance can usefully be placed on the cases of other individuals, little weight can be placed on statistical data without knowing the underlying facts or seeing the underlying decisions. With those caveats, though we note that the data shows that, between 1 July 2015 to 31 March 2017, there were 95 protection claims based on sexual

orientation, forming 3% of the 2,727 claims lodged from Albania. Of those, leave was granted in 12 cases at initial decision stage. All of those were grants of limited leave and not asylum. 66 cases were refused. At the appeal stage, of the 27 appeals dealt with, 11 appeals were allowed, 15 dismissed and one withdrawn.

154. Mr Chelvan made much of the lack of hate crime data from Albania and invited us to draw an inference from that. We deal with that under the next heading of sufficiency of protection. We take into account however Mr Chelvan's submissions about the numbers of gay men in Albania and the lack of visibility of such numbers which he says points to the fact that few gay men are openly gay which is relevant to the level of risk. We have already referred to his submission about the low numbers of gay men attending the Gay Pride event in 2018.
155. Mr Chelvan suggested to Ms Young that there are likely to be about 175,000 LGBTI individuals in Albania. She did not disagree but did not provide any evidence to show that she had researched this aspect herself. When we asked Mr Chelvan about this figure, he said that the Office of National Statistics for the UK put the figure of LGBTI individuals within the UK at 2% whereas Stonewall considers it to be closer to 5%. We were not shown any documents supporting his submission nor given any explanation why he preferred the Stonewall figures. In any event, we were not provided with any evidence to show that the recorded percentage of LGBTI individuals in the UK, whichever figure is accepted, is a reliable measure for the community of LGBTI individuals in other countries nor what proportion of the LGBTI numbers relates to gay men. The figures put forward are at best speculative and do not assist us.

### *Risk from Family Members in Tirana*

156. We turn now to the evidence about the risk to a gay man of being traced in Tirana by their family members and harmed by them. Ms Young reports ([B/52]) that it would be problematic to relocate within Albania because of the nature of society there. She explains:

"Albania is a very small country (the size of Wales). Relocation would be extremely difficult for ...BF...In Albania, both the rural and the urban populations are based on networks of kin and neighbours, in which literally 'everyone knows everyone'. Because of a high reliance on personal family networks of support, any Albanian person, would be generally highly visible if dislocated from their local home place. Not only is it difficult to integrate and settle somewhere in Albania without previous existing and positive personal contacts and ties, but the whereabouts of anyone is always easily identified. People are socially positioned through inquiries and identities are hard to hide. The only area in Albania where LGBT+ individuals are able to have any kind of safe social interaction is Tirana. But for BF..., this is not a safe city since his family could soon locate him; he would not be able to lead a life as an openly LGBT+ person, even in Tirana, without persecution."

She continues:

“BF...would also have difficulty in finding employment or any means to support [himself]. [He] would be likely to face rejection, inevitably putting [himself] at risk of violence. BF ...[has] already lost the respect of those who knew [him]. The fact that [he was a] victim of homophobic aggression will count for nothing in [his] favour, rather the reverse – those who were aware of [his] attacks would consider them well deserved. [He will be] judged by the fact that [he] cannot account for good standing in society. There is little if any follow up on police action (as was already seen in BF’s case). Abuse of the judicial system is widespread. It is highly likely that the appellant would be [a] target of [his] father and possibly others, especially paternal uncles once they heard [he was] back in the country. Even [his family], who all feel impelled by a deep sense of maintaining family honour, might (as [his father has] threatened) use further violence in order to clear what they perceive as the shame, as a suspect in their sexuality. [He has] brought shame to [his] family name. [His] fear of being persecuted or even murdered, is very plausible, founded on the public knowledge of the repercussions of events of the past years, which will have been framed as being all the fault of BF..in failing to comply to patriarchal law on family mores.”

157. As to the risk of tracing to Tirana, Ms Young, at [B/41] draws attention to what is said in the July 2017 CPIN as follows:

“In order to receive government services, individuals moving within the country must transfer their civil registration to their new community of residence and prove the legality of their new domicile through property ownership, a property rental agreement, or utility bills. Many persons could not provide this proof and thus lacked access to public services.”

158. Ms Young adds that, in the longer term, the requirement to re-register would bring an individual to the attention of persons in the individual’s home area. She said in her oral evidence that she would expect the family to come to know of the returnee’s whereabouts within about six months and more quickly if the person were openly gay.

159. Attention was drawn by Ms Young to what was said by the Tribunal in EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC) but omits a key passage highlighted below:

“...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”.

**“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...”**

160. Ms Young also says at [B/46] that “usually” returnees are checked for criminal records at the airport and that this is likely to involve word reaching the returnee’s local community and family. Her evidence was that she had been to the airport and found out about it last year; she met four airport policemen who interviewed the men returning to Albania in the previous year. She said it was known that those

returning to Albania had to be “received”. They were separated from the others on flights and had to go through intensive interrogation. Ms Young said that she had known about it a long time ago. She had spoken to people coming back to Albania. When her answer was probed, it appeared that she was referring to those on Home Office charter flights who could therefore be identified as Albanians being returned to their home country.

161. Ms Young did not know whether the process for criminal record checks or re-registration was computerised or manual. Her attention was drawn at the hearing to the December 2017 CPIN. Paragraph [10.1.2] confirms (by reference to a 2013 WHO report) that the registration system is electronic. In addition, she was referred to a letter from the British Embassy dated 6 October 2017, in response to a question “Is it possible for someone to access personal data for illicit purposes through the civil registration system?” said as follows:

“With regard to the use, or misuse, of the civil registration system, the Deputy General Director was aware of one case in which the perpetrator had approached a policeman, whom they knew personally, and the policeman had then taken the perpetrator to the shelter at which the victim was being housed. It was not clear from the Deputy General Director’s account whether the policemen had located the victim at the shelter via the civil registration system, or through some other means. In any case, legal action was then taken against the perpetrator and police officer.

We were advised that some, but not all, police officers have access to the civil registration system. Access to the system requires use of a personal login code, and all of their lookups on the system are electronically recorded. The Deputy General Director made clear that whilst some police officers could access the system for illicit purposes, they could not do so with impunity – their access would leave an electronic audit trail and there would be repercussions for the officer.

With regard to whether the victim would be checked against the municipality record of her last place of residence, Social Services commented that her previous municipality would come to know that she had moved to Tirana if she asked for her registration to be moved there.”

162. Ms Young agreed that the system could not be abused because that would be a breach of data obligations but added that “they wouldn’t think they were [in breach]”. She was however unable to provide examples of where police or other officials had improperly provided details. She had not had to register or check the register and was unfamiliar with the process. Her source for information about the process was the Home Office’s own CPINs. She also considered that such information would come to the ears of the family not simply via the registration system but by “gossip”. She acknowledged in her oral evidence that she has not provided specific examples of individuals being traced on return and harmed, save for one example to which we refer below under the heading of sufficiency of protection which concerns a blood feud victim. She said though that she “had heard of cases” although did not provide sources or details.

### *Discrimination in Tirana*

163. Ms Young was taken in evidence to the API at [B/744] which provides the following definitions:

“...A discriminatory measure, in itself or cumulatively with others, may however amount to persecution if it led to consequences, which were of a substantially prejudicial nature for the person concerned. For example, it may, depending on the facts of the case, amount to persecution if the discrimination has resulted in sufficiently serious consequences for the person concerned such as:

- Serious legal, cultural or social restrictions on rights to, or ability to earn, a livelihood
- Serious legal, cultural or social restrictions on rights to, or ability to enjoy, private and family life
- Serious legal, cultural or social restrictions on rights to, or ability to enjoy, freedom of opinion, expression, association or assembly
- Restrictions on political enfranchisement
- Restrictions on the choice to practise or not practise a religion
- Restrictions on access to public places
- Restrictions on access to normally available educational, legal (including law enforcement), welfare and health provision.”

164. Ms Young’s opinion was that a gay man in Tirana would face all those restrictions. However, on being questioned, she did accept that certain of the restrictions would apply to a lesser extent (such as access to public places and in relation to political enfranchisement).

165. Mr Thomann drew our attention to information contained within the UNDP 2017 report which states that, although “the reality shows that LGBTI people face high levels of discrimination by employers”, “[i]n Tirana they can access employment more easily, and can receive support from LGBTI people’s organizations” ([B/574]). That report provides some statistical analysis of the problem. In 2016, Alliance LGBT reported 43 cases of discrimination in the workplace and/or in recruitment and selection. However, a 2015 poll is said to have shown that 39% of LGBTI workers who came out did so in front of work colleagues and a 2016 study of perceptions of local officials found that 73% of employees are positive towards the employment of LGBTI persons in public administration. Even so, a recruitment group survey showed that of the 71 companies reviewed, only 22% had policies which contained language related to LGBTI although 38% said that they were willing to work more on LGBTI inclusion (see reference also at [B/366]).

166. The article at [B/561-3] provides a specific example of the sort of problems which a gay man in Tirana may face:

“After finishing his university studies, he tried his hand at a number of jobs: from car wash assistant, to supermarket shelf stacker and call centre operator. Presently he lives alone in a rented accommodation and is out of work. He says that when people know you are gay it is very difficult to be offered a position. If you can keep your sexuality a secret the chances of getting a job are higher.

There is no freedom at all in life; it is us who try to make it free. Still, it is hard to escape discrimination. Employers simply won't hire you. You may think, I am trying to be respectable and keep myself in check, in both my dress style and demeanour, but there are still things that may give you away and the other person may understand who and what you are. There are certain traits that set us apart and some people are able to tell. On the other hand, there are others who cannot tell or who couldn't care less. What they care about is a job well done. Things in Albania are still rather difficult, but we are trying to adapt ourselves to this way of life as best we can."

167. Mr Thomann accepted that the evidence does show some discrimination in the area of healthcare (see for example the comments of the STREHA director at [B/30] and reference in the ILGA 2017 Review at [B/621] noting that thirteen cases of discrimination in healthcare had been reported to Aleanca according to its 2016 report). However, he also drew attention to the article entitled "How sexuality education is improving young people's lives in Albania" dated July 2018 at [B/104-107]. The article begins by drawing attention to the fact that "[y]oung people from marginalised groups in Eastern Europe and Central Asia are being harmed by high levels of violence, discrimination and stigma, and it is enormously difficult for them to access sexuality education or the sexual and reproductive health (SRH) care they need". The article draws attention to the work of ACPD which has put in place network and training programmes to help stigmatised young people and it is noted that "ACPD has succeeded where many have failed before in reaching marginalised young people and having a positive impact on their lives". Figures are given showing that ACPD has provided care to 500 young people and has counselled stigmatised young people on dealing with harm caused by discrimination and violence from people in positions of authority.
168. An online article at [B/143-144] dated May 2018 describes recent efforts by the PINK Embassy for changes to be made to the law governing the status of same-sex relationships. It is stated that Albanian law does not provide for the same rights of cohabitation or marriage for same-sex couples as for heterosexual couples. The PINK Embassy records that it has been trying for eight years to achieve a change to the Family Code. The evidence of Mr Pinderi was that he was in a same-sex relationship for a number of years whilst still in Albania. We note that he does not record any specific difficulties in terms of adverse legal consequences arising from the lack of such recognition.
169. Concerning discrimination generally, we take account of the following evidence in particular:
  - (a) The UNDP 2017 Report refers to the 2015 CPD report which, while drawing attention to legislative amendments and protection policies for LGBT people, records that "the on-the-ground situation for LGBTI people had not improved significantly" ([B/584]). It is said that:

"LGBTI people face sexual harassment and discrimination in recruitment and employment. Challenges include difficulties in finding work for

people who are open about their sexual orientation, or stress caused by others finding out about their sexual orientation" ([B/568]).

The report highlights complaints about the denial of access to transgender people to public services and private bars and shops.

(b) The May 2017 CPIN at [B/655: 6.6.1] observes:

"In recent years there has been a rise in the number of LGBT youth who have problems with housing. This is a result of a few factors, coming out to the family and in some cases this resulting in being kicked out of the family house, harsh living conditions and discriminatory and aggressive communities (especially in small cities) inability to find a job, or inability to rent a house as a result of discrimination because of sexual orientation or gender identity."

(c) The CPD undertook several "ex officio" investigations into discrimination against LGBTI people in relation to employment, education, housing and hate speech. The CPD draws attention to health and psychosocial services being "insensitive" towards LGBTI people. The PA is also reported in the May 2017 CPIN to have drawn attention to discrimination in employment.

(d) At [6.7.4] of the May 2017 CPIN, reference is made to a contribution to the European Commission by Aleanca, Pro-LGBT, ILGA-Europe and ERA for Albania's report for 2016 as follows:

"Forty-three cases of discrimination in workplaces and/or discrimination in job recruitment and selection were reported to Aleanca LGBT. These are cases of LGBTI people having difficulty in finding work because of stigma and prejudice, experiencing sexual harassment based on sexual orientation and gender identity during job interviews, or being fired because the employer has found out about the employee's sexual orientation or gender identity. Only one case was reported to the authorities.

For the first time in this period, the Head-hunter group, a human resources company in Albania, launched and implemented the LGBTIQ Employment Equality Index, the first non-EU country to have such a system in the Balkans. The index is a ranking system that determines how well companies respect the rights and dignity of LGBTIQ persons in their hiring, training, development and general employment practices. The Albanian Government is encouraged to support this index by promoting it and to have state owned companies be part of the Equality Index".

(e) Mr Hazizaj is reported to have said in an article published on 21 May 2018 (to mark the presentation of the Monitoring Report of the National Action Plan for LGBTI persons in Albania) that "[t]he Report shows that despite the fact that Albania has taken serious steps forward, there are still some several areas where the government and its institutions need to strengthen



a lot their work! Access to health, violence in schools and access to services remain among the most problematic areas, requiring urgent actions.”

### *Findings on the Situation Faced by an Openly Gay Man in Tirana*

170. Having regard to the evidence set out above, we have reached the following conclusions about the situation facing an openly gay man living in Tirana.
171. We begin with our consideration of the assertion by Ms Young that there is a general risk of violence from homophobic gangs in Tirana. Her opinion is unsupported by any specific examples except those which were provided to her by Mr Kodra and Mr Pinderi which are limited in scope and time.
172. We give some weight to the evidence of Mr Pinderi despite his evidence not being tested. His 2018 statement refers to only one incident of personal violence. It is not clear when it occurred. We know it occurred in Mr Pinderi’s home area of Pogradec (near the border with Macedonia) and not in Tirana. There is no evidence that Mr Pinderi reported the incident to the police. Although Mr Pinderi refers to threats, there is no indication that in the ten years in which he advocated LGBTI views as an openly gay man in Albania, any such threats materialised into violence against him and his partner other than the single incident mentioned and vandalism to his car.
173. We note the contrast between Mr Pinderi’s views in 2018 and those expressed in 2013 (as contained in Ms Young’s report). In the 2013 interview, he says that the violence is particularly within families and is “sophisticated...financial violence”. There is also a divergence between the views expressed by Mr Pinderi and those of Mr Hazizaj in his October 2018 interview. Even in the case of violence within families, Mr Hazizaj says that the main concern of those families is what will happen to their children if they “come out” in terms of societal reactions.
174. It is significant that none of the LGBTI NGOs reports violence towards their organisations or representatives (except for the one example which Mr Pinderi gives). They are obvious targets for societal attack. There has not been any incident of violence at recent Gay Pride events. Even in the recent past, the incidents are limited and are minor in nature. We note also what Mr Hazizaj says about the growing acceptance of those events in Tirana. We accept that there is reference to the STREHA shelter fearing “arson and havoc” but we note the rather different position of that organisation (for the reasons we give at [140]); there is no report of any such fears materialising.
175. We accept that there are some incidents of violence in the recent past reported in the documents before us. Specific incidents are referenced in 2011, 2012 and 2013 (ECRI 2015 report as contained in the May 2017 CPIN), eight incidents of physical violence and twelve of domestic violence made to Aleanca in 2016 (as well as 523 reports of

bullying) and “several” cases reported to PINK Embassy (ICI report). However, those incidents are not of sufficient frequency to amount to “a consistent pattern of such mistreatment” (AA (Zimbabwe)) and fall short of violence of the kind that Ms Young claims exists.

176. We also take account of the evidence of “Alesio” in the article at [B/561-563] that he is not openly gay because he does not wish to be “one of those who is abused or verbally attacked”. That too is a consistent theme of the documents before us; that the nature of the attacks is often verbal abuse or harassment (see for example the citations from May 2017 CPIN and report of the Albania Helsinki Committee in 2015). As such, the incidents reported do not show that there is a “real risk of coming to harm”.
177. Mr Chelvan submitted that there is under-reporting of incidents, in part because gay men do not openly disclose their sexuality for fear of what will happen to them and in part because the Albanian authorities do not gather data as to hate crimes. There remains however a lack of evidence of documented incidents of violence against those who are known to be gay whether reported or otherwise. Nor are we assisted by the evidence showing how many hate crimes are recorded as perpetrated against gay men in the UK which is of limited relevance. This is not evidence of the numbers of gay men in Albania or the likelihood that they will face a real risk of serious harm on return. We are not assisted either by statistics in relation to appeals of LGBTI individuals who have claimed asylum in the UK. Those statistics show only that eleven individuals have had their appeals allowed in the period 2015 and 2017 and we are not provided with details of those allowed appeals. We consider that if more incidents of violence had occurred they would have been reported or recorded.
178. Drawing together all the above, we are not persuaded on the evidence before us that an openly gay man, by virtue of that fact alone, in general, faces a real risk of violence in Tirana.
179. In relation to a risk of harm of an individual’s family tracing a son or relative in Tirana and causing harm, there is only very limited evidence before us of any discovery of an individual by family in the capital arising from the operation of either the registration system or criminal checks at the airport. Ms Young was unable to tell us whether the criminal checks at the airport were done electronically or manually. Her knowledge of the registration process is confined to the Respondent’s own reports which confirm that it is an electronic process. The way in which that process operates would enable anyone abusing the checking system to be identified. There is only one example of tracing (of a victim of domestic violence) which may have arisen by abuse of the registration system. Action was taken against the police officer who wrongfully provided details of the whereabouts of the victim.

Ms Young was unable to provide us with any specific examples of individuals who have been traced and harmed in this way.

180. There is evidence of only one blood feud victim having been targeted and killed on return from Sweden to Albania. There is no evidence that the registration system was abused in the tracing of that individual.
181. 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.
182. Finally, in relation to discrimination, we are unable to accept Ms Young's evidence that all of the factors set out in the API would apply. She herself admitted that some might apply less than others. We have seen no evidence supporting any restriction on political enfranchisement as a result of sexual orientation, that gay men are prevented from practising their religion or that they are not in general able to access public places. The fact that Gay Pride events are organised in Tirana is evidence of the ability to associate and assemble as is the existence of LGBT NGOs and gay-friendly bars in the capital.
183. There is some limited evidence (in the 2015 CPD report) of denial of access to transgender individuals to public services and private bars and shops. We also accept that discrimination may limit the availability of employment opportunities and could mean that an individual may not always be able to obtain and retain a job of his choice. The CPD carried out "ex officio" investigations in relation to access to employment, education and housing. The fact that the CPD investigates discriminatory access is itself recognition of the availability of avenues of complaint (as we come on to in the next section). There is reference in the May 2017 CPIN to the launch of an LGBTIQ Employment Equality Index in 2016 and some evidence of improving attitudes of employers in the various surveys to which reference is made in the background evidence.
184. Marriage between two men or its civil partnership equivalent is not provided for in Albanian law. There is no evidence that this prevents cohabitation or couples making their own arrangements to ensure, for example, transfer of property between them. We take note of the fact that Mr Pinderi was able to live in a relationship with another man whilst in Tirana. It is not said that they were unable to do so or met with any particular difficulties in that regard caused by the lack of legal recognition.

185. Whether considered in isolation or cumulatively, we do not consider that the level of discrimination which the evidence suggests exists reaches the level of having “sufficiently serious” consequences for the individual and does not therefore constitute persecution.
186. By way of conclusion, and having regard to all the evidence, there is no real risk that an openly gay man would face persecution if living in Tirana. Even if an openly gay man were able to demonstrate that he faced a risk of serious harm or of discrimination that cumulatively reached the threshold to amount to persecution, we are satisfied that there is a sufficiency of protection in Tirana from the state and sufficient redress against the discrimination feared to protect against that risk. Our reasons are set out in Section C below.

### **C: Sufficiency of Protection in Tirana**

#### *The Police*

187. It is accepted that the Appellant spoke to a police officer in his home area. However, he explained that this was done in a hypothetical sense; in other words, he asked the police officer what he would do if a gay man reported such ill-treatment and whether action would be taken. The Appellant’s evidence accepted by the Respondent is that the police officer said he would not help. It is also accepted that the Appellant made a similar approach to a police officer in Tirana. However, then again, he did not make a direct report of the ill-treatment; it is not his case that he suffered any further ill-treatment in Tirana. Again, it is accepted that the police officer did not respond positively. The Appellant said, however, that he would take the matter further if the police would not assist (“Of course I would appeal because he is not treating the people the same”).
188. Ms Young refers in her report to the US State Department report for Albania in 2015 which summarises the position in relation to police corruption ([B/32]):
- “Corruption was a problem among police, and authorities took measures to combat it. Although the government’s internal Control Service investigated and referred for prosecution a significantly higher number of police officers during the years than in 2013, courts convicted few of them...  
The Albanian State Police Corruption Section investigated corruption cases. The section had a limited capacity for undercover investigations and surveillance, hampering its investigations.”
189. Mr Thomann accepts that the police in Albania are not always perceived as enforcing the law equally (see for example reference to the US State Department Report for 2016 at [5.5.1] of the May 2017 CPIN: [B/643]). However, he says that the situation is improving and that, in particular, the training offered to the police on the handling of LGBT cases (involving collaboration with NGOs) has been beneficial to ensuring a sufficiency of protection, in particular in Tirana. As we have already noted, it is

accepted that there is doubt about the sufficiency of protection offered in the Appellant's home area in rural North-east Albania.

190. At [5.6.1] of the May 2017 CPIN ([B/644]), reference is made to the statement by LGBT NGOs which includes detail of the training given to police officers:

"From 2014 on, ProLGBT (in 2015 together with Aleanca) has been training police officers in Tirana; all chiefs of all six police stations in Tirana and 20 to 30 policemen and policewomen per police station, plus 30 police from the elite forces The Eagles. The organisations believe that the police in Tirana have become more professional, but there is no data available on the situation outside Tirana. The signs are mixed: there is great sporadic collaboration in some southern municipalities, but also a report of a transphobic incident with the police in Shkodra, a northern city in early 2016. Police officers there harassed a group of LGBTI activists and one transgender woman in particular."

The same report goes on to make the comment that:

"In general the impression of police collaboration is positive, but it is important that newly trained police officers also receive LGBT awareness training in their education. Also, it remains doubtful that the police have proper internal protocols to deal with hate crimes, even though hate crimes are now addressed by the penal code."

191. The above reference to an incident of police harassment is most likely to have been to the encounter involving Ms Karaj which occurred on 20 January 2016 when she was in the company of a transgender friend and which Ms Karaj describes as "terror from the state police" ([5.7.4] of the May 2017 CPIN). Her friend was stopped whilst travelling in a car with Ms Karaj and she was asked for ID which she did not have. The police tried to take her to the police station. Ms Karaj threatened to file a complaint. Another police car arrived and following the further threat of complaint, the original policemen left "like cowards from a battlefield". Ms Karaj was advised to file the complaint in Tirana rather than in the local area. Notwithstanding this incident, Ms Karaj has commended the "good cooperation" between NGOs and the police ([B/645]) although we note that this is a comment apparently made in 2014.
192. The Albania Helsinki Committee 2015 report features in the May 2017 CPIN as pointing to the "good cooperation" between the NGOs with the State police authorities ([7.1.2]; [B/658]).
193. In relation to the training of the police, an online article at [B/147-148] dated May 2018 provides more detail as follows:

"Following the preparation of a new guideline on "Hate crime policing against LGBTI persons: Training for a Professional Police Response", over 150 police officers from all over Albania have been trained in a 2-month period to identify and address hate crimes against LGBTI people. The Sogi Manual is designed for police trainers, investigators, hate crime officers and field officers working in Council of Europe countries. It is based on the standards of the Council of Europe and its purpose is to

provide the assistance, information and the appropriate tools for the development of hate crimes training on LGBTI persons, to help improve the knowledge of law enforcement officers on hate crime against LGBTI persons and strengthen the capacity and practical skills to investigate such crimes.”

The article, which reports predominantly on a two-day regional conference between Albanian civil and government institutions and the EU and other international organisations, concludes that:

“Anti-LGBT violence should be recognized as an expanding phenomenon and addressed through various methods, not just as a hate crime, not just as a change in justice and politics, not just in reporting, documenting and dealing with cases. LGBT civil society organizations and LGBT communities, together with police and justice institutions are cherished for starting and pushing for change. If they do not participate in the reform, the changes (if they will happen) will not have consistency, responsibility and depth. Thus, when institutions understand the LGBT community’s appreciation, reforms are easier to achieve and are more productive.”

194. The FFM Report at [B/431] (which is predominantly concerned with violence against women) notes the comments of the CPD that they had trained 500 officers at national level “with a focus on some particular groups including women, that have more contact with the police. It was not regular training though; it was a particular project they did with the Albania police in 2015”.
195. Ms Young explains at [B/31] that “[w]hile it is true that there have been attempts to improve the situation for returnees, and there has been an increase in the number and quality of police trained, Albania, as the poorest country in Europe, suffers more than most from emigration”. The turnover of police officers was likely to impact on the effectiveness of training given to the police unless that training were continual because those who were trained would leave. She did not point us to any current source supporting her assertion that police officers in particular migrate from Albania other than a general statement about migration and reference to a 2016 report from Transparency International which notes “high staff turnover”. She also said in her answers to the Respondent’s written questions ([B/86]) that the training of police and prosecutors had been “inadequate” and she attributed that inadequacy, in part, to the fact that “all the career positions named are political positions and change when the party in power changes thus preventing proper continuity.”
196. Ms Young identifies four examples of those who did not receive “proper” police protection on return. One dates from 2013 and another from 2014. Unfortunately, the sources quoted are articles in Albanian which are not translated. The third is to a returnee from Sweden about whom more information is provided in the report of Mr Pinderi (see also the article at [B/369]). Ms Young (and Mr Pinderi) accept that the victim was the target of a blood feud (contrary to Mr Chelvan’s submission to us). We are not assisted by the fourth example concerning the case of a high-profile Judge shot dead by her ex-husband in a domestic violence incident. As Ms Young says in her report, this was the ex-husband’s third incident and the fact that he had been

imprisoned for two years following an earlier attempt does not show that the law enforcement system was not prepared to act.

197. Mr Pinderi's views on the police protection available taken from his 2018 statement are as follows:

**“Question:** Is there any availability for Police protection for LGBTQ individuals who are threatened?

**Answer:** *I have personally witnessed how Albanian Police has improved during the last 6-7 years. But it remains an organization incapable of improving itself from inside without a political will. Furthermore sadly enough during the last two years the Albanian Police has been accused of directly supporting illegal trafficking of drugs and being one of the most corrupted organization*

Can a corrupted organization being led by someone who allegedly has been a drug dealer protect citizens?

Former Minister of Internal Affairs Mr Saimir Tahiri, including dozens of high ranking police officers is currently under investigation for international drug trafficking and corruption based on a large Italian investigation. The Albanian prosecutors believe Tahiri regularly made large sums of money from drug payments. While after some arrest orders were made public for high ranking former police officers, the most important among them became fugitives and they are still under international search.

...

From 2013 when the actual Prime Minister won the elections, Albania has doubled the amount of illegal cultivation of cannabis as reported by Italian and EU major observations.

It is important to mention such sad facts about Albanian Police if we want to understand the context of its work. I strongly believe that it is difficult for an organization that is blurred and covered for a long time by such scandals to focus on issues such as hate motivated crimes, which are crimes affecting the lives of LGBT+ people.

But still, on paper, everything might look promising. Recently, Tirana's Police had edited its own protocols to include concrete and detailed steps of investigations of hate motivated crimes. Be advised though, that this was done only in papers as there is not even a single case of the investigation of a hate motivated crime in Tirana.”

198. We have already referred above to the comments made by Mr Hazizaj of the PINK Embassy in his October 2018 interview about the police.
199. Although mainly in the context of domestic violence against women, the FFM Report 2017 at [B/428] remarked on the changing attitudes to the police:

“[1.17.1] Several sources noted that the number of reported cases of DV showed an increased awareness and increased trust in the police to investigate cases. The police are usually the first institution a VDV approaches. They are now more receptive to complaints and more likely to follow up on them...”

200. Although this report focusses in the main on the position of women who are victims of domestic violence rather than LGBT individuals (and Mr Chelvan draws attention to the difference in the relative numbers of police officers who have been trained in

respect of the two areas), the CPD comments at [B/554] that the focus of training for the police as a whole has been on groups including LGBTI individuals.

201. The comments of the Albanian Ombudsman's representatives as cited in the FFM Report at [B/546] are that:

"It was to be the case that the person couldn't report it to the police, but that isn't true anymore. If a case is reported, it will be investigated. No claim is left unfollowed. In the past, there have been cases where the police have been prosecuted or charged administratively for not doing anything, so they don't want that anymore."

202. We note however [6.4.3] of the May 2017 CPIN, by reference to the ERA April 2016 report ([B/653]), that Albania has no official data collection on hate crimes, violent attacks are underreported "in part due to police abuse or ridicule". The report also refers to training and presentations with the police by LGBT organisations since 2010. The report concludes that "a lot remains to be done and more awareness needs to be increased with prosecutors and courts".

203. We have referred above to the 2015 ECRI and Albania Helsinki Committee reports concerning the level of incidents of violence as reported in the May 2017 CPIN. By way of comment on the significance of the reported incidents in 2011-2013 in the ECRI report and none in 2015 in the Albania Helsinki Committee report, Ms Young said that this showed that people were scared to report incidents. She agreed though that the ECRI report showed that PINK Embassy were effective in making complaints. She added that this was because the Director is a lawyer. When asked later about people's willingness to report, Ms Young said that she had "found in all cases they were fearful of reporting" and "fearful of going to the police" except the PINK Embassy. She accepted that she did not ask Mr Hazizaj how many complaints he had made; he had not offered any information about this. As to the article about the incident involving Ms Karaj which suggested that she at least was willing to complain about police harassment, Ms Young was unwilling to accept that the police response to the threat of a complaint was an indicator of any concern by the police about the prospect of a complaint being made.

204. The EU 2016 Report makes the following observation on the failure to gather data on hate crimes ([E/65]):

"On hate crimes, the state police appointed a dedicated focal point. However, the number of reported cases remained insignificant and no judicial prosecution has yet been initiated. Data collection on hate crime continued to be lacking. The CPD dealt with hate speech cases targeting the LGBTI community and in two cases decided to fine the perpetrators. The CPD continued to organise awareness campaigns and training activities. Anti-discrimination case-law needs to be further developed and its implementation improved."

205. Mr Chelvan sought to compare the position with that of the UK where, in 2017/18 11,638 hate crimes were recorded on the basis of sexual orientation (12% of crimes)



and 1,651 on the basis of transgender identity (2% of crimes). Whilst we have no doubt that it is helpful for countries to gather statistics of this nature, we cannot see the value of the reliance on this data. We are not comparing like with like; if a state does not have statistics relating to hate crime, it does not follow in our view that the state is either unwilling or unable to protect against such crime. For the same reason, the fact that the Albanian State now gathers and publishes data on gender-based crime does not of itself provide an indicator that the state is more or less willing to protect LGBT victims when compared with female victims of domestic violence.

### *The Prosecutors and the Judiciary*

206. As Mr Chelvan points out, sufficiency of protection is not simply about a willingness by the police to take action but also a willingness of other authorities to pursue action. It is therefore necessary to look also at the position in relation to prosecutors and the judiciary. We have dealt with corruption of those institutions in a separate section above. We have also dealt separately with the failure to implement the laws on the statute book fully. We have also mentioned that some politicians have made statements against LGBTI individuals and/or rejecting efforts to change societal attitudes.

207. Mr Thomann accepts that, although hate crime based on sexual orientation and gender identity is a criminal offence, there are no reported instances of prosecutions for such offences. On the other hand, it follows that if there is underreporting of incidents of violence and hate crimes by the LGBTI community as Ms Young insisted was the position in her evidence, then there would be nothing to investigate or prosecute.

208. We turn to the role of the CPD and the PA.

### *The Commissioner for Protection from Discrimination*

209. Against the background of Mr Chelvan's submission that the risk of discrimination, individually or collectively, may give rise to a real risk of persecution, we have already mentioned the existence of the CPD and his role above. The CPD's report for 2018 at [E/102] records:

"During the year 2017, "race" continues to be the main ground of alleged discrimination, although has been ascertained that cases of alleged discrimination on grounds of "economic status" and "political convictions" are increased. Discrimination complaints on grounds of "sexual orientation", "gender identity", "and gender" and "health status" keep staying at the same level...."

210. In relation to LGBTI discrimination, the CPD comments ([B/106]) that:

"Public awareness and acceptance of LGBTI persons remain low, particularly in rural areas. Hate speech and discriminatory language continue to be a problem in the media especially online media".

211. The statistics relied on in the report show that there were seven reports of discrimination based on sexual orientation in 2013, three in 2014, four in each of 2015 and 2016 and three in 2017. The USSD 2017 Report at [B/206] records that as at August 2017, the CPD received three complaints alleging discrimination based on sexual orientation and gender identity and ruled in favour of one. The UNDP 2017 Report records ([B/582]) that in 2015 four complaints of discrimination based on sexual orientation were made and one in relation to gender identity. The report records that the CPD had investigated those and “issued recommendations and sanctions against the alleged perpetrators.”
212. Another document from the CPD at [B/725] records statistics between 2010-2018. It shows that the overall number of inquiries range from 4 in 2010 to 166 in 2017. The number of cases handled ranged from 1 in 2010 to 209 in 2017. The number of media appearances (not including social media) ranged from 10 in 2010 to 42 in 2015. We do not draw any adverse inferences from the existence of “no data” for 2018; it is likely that this data was simply not harvested when the report was produced. Nor do we consider that the lack of data relating to media appearances by the Commissioner in 2016-2018 discloses any lack of will by this organisation, particularly given that the post of Commissioner was vacant for at least part of the time and that it is likely that it would be the Commissioner himself who would appear in media interviews and the such like. We accept though that the statistics are overall numbers and do not specifically relate to LGBT discrimination cases. We therefore refer to specific instances where the CPD has acted in LGBT cases.
213. The CPD refers to a complaint in 2010 by two LGBT NGOs about being denied participation at an HIV/AIDS hearing session by the Parliamentary Commission on Health. The CPD recommended that Parliament provide space to LGBTI organizations in public hearings which was taken into consideration in 2013 hearings.
214. In 2011, following complaints by LGBTI organisations about physical violence in schools, the CPD conducted a survey to assess the knowledge and application of the anti-discrimination laws. That led to a recommendation to the Ministry of Education to take measures to reduce bullying in schools and introduce human rights education in schools.
215. The UNDP 2017 Report records that, in 2012, following complaints made by two LGBT NGOs, the CPD initiated two investigations into homophobic speech by politicians. Criminal prosecutions were refused because of a legal vacuum in relation to hate speech. The involvement of the CPD led to an amendment to the penal code ([B/583]). In 2013, following findings against two public officials that they had misinformed the public through the media by associating sexual orientation with paedophilia and recommending an apology, the CPD sanctioned the officials with a fine when an apology was not forthcoming ([B/584]).

216. The ILGA 2017 Review ([B/364]) refers to the CPD dealing with four claims relating to sexual orientation and gender identity in 2016. Discrimination was found in one case involving the police in Shkodra and the police authority was fined. Although no connection was made between the report of this incident and the article concerning the incident involving Ms Karaj during the hearing, it seems to us likely, given the date and location of the incident, that this complaint relates to the incident to which we have referred above. The CPD also found evidence of hate speech in online media. The third case involved comments made by a MP and the fourth was found not proved (in relation to education).
217. In response to the Respondent's written questions prior to Ms Young's report, when asked about her understanding of the role of the CPD and the impact of its actions, Ms Young replied "I have to admit that this is news to me, which is surprising as I have worked on probably as many as 20 LGBT cases since 2010. I tried to reach the website given, and got this response...SITE NOT SECURE, so I didn't dare look further." ([B/88]). She went on to say that she believes that "most people don't have faith that by reporting discrimination, there will be effective action." We note that Ms Young has not referred to either CPD or PA in the first draft of her report.

### *The People's Advocate*

218. When asked about the role of the PA and her view of the significance of the PA's advocacy of LGBT rights ([B/88]), Ms Young responded to the Respondent's written question as follows:

"In attempting to find LBGT [sic] People's Advocate, I only brought up an Advocate for Women's Rights. However, Regarding the Action Plan it is a total failure. There is not even a single event organized by the Government who now just collects what the NGOs are doing and they report it as part of the action plan. After the last election the government removed from its structure the entire Ministry of Social Welfare that was responsible to implement the action plan and melted its directories with the Ministry of Health such making the social welfare a secondary issue under the health issue. Find below an article explaining the failure with the action plan (google translate it)..."

219. It is not clear why Ms Young associated her answer about the PA with an unconnected response about the NAP which also appears somewhat at odds with what she says in an earlier answer specifically concerning the NAP where she describes it alongside the other "laudable laws" which are yet to be "properly understood and universally acted upon". ([B/86]).
220. Ms Young said in evidence that she doubted that most people in Albania would be aware of the CPD or PA or know how to contact them. She said that she accepted that individuals had the right to report discrimination but not that they would be "able to follow through". When asked why that would be so, she said that they would not be supported by teachers or the police and would be intimidated or prevented. She was also not prepared to accept that the threat of action by the CPD would have any impact on the police attitude. She said that she "didn't think they

would be too concerned” and even suggested that the CPD might be open to bribery (as to which there was no evidence). As Mr Thomann pointed out, in the report of the incident involving Ms Karaj, the police threatened with a complaint are said to have left “like cowards from a battlefield”. No doubt because she was not aware of the existence of CPD or PA Ms Young did not approach either organisation during her May visit.

### *Findings on Sufficiency of Protection*

221. Based on the above evidence, we draw the following conclusions about the sufficiency of protection available to an openly gay man in Tirana should he face a risk of harm or serious discrimination.
222. There remains some corruption within the police force in Albania against which there are effective avenues of redress if an individual police officer abuses his power or fails to enforce the law (see reference to US State Department report for 2015 cited by Ms Young and the section dealing with corruption more generally above).
223. It is accepted by the LGBTI NGOs in particular and in other background evidence that there has been improvement in the conduct of the police. Ms Young also accepts that there have been some improvements. We nevertheless accept that there are still some incidents of police officers behaving in an inappropriate manner illustrated by the report of the incident involving Ms Karaj in 2016. The police in Tirana have been trained how to deal with hate crimes against LGBTI individuals. In addition, the evidence shows good cooperation between them and the LGBTI NGO community. The evidence demonstrates that this is likely to endure.
224. Although there is no evidence that the training of the police is continuous or repeated, there is only limited evidence in support of Ms Young’s assertion of the high staff turnover in the police force attributable to emigration. We are unable to reach a firm conclusion on either aspect. However, we repeat the point made above concerning avenues of redress in the event of abusive behaviour. The examples of an inability by the police to protect are few and taken at their highest do not point to an unwillingness or inability by the police to protect LGBTI individuals in Tirana.
225. The evidence of the Albanian Ombudsman to the Fact-Finding Mission (albeit in relation to victims of domestic violence) and the evidence of advocacy by LGBTI NGOs in Tirana undermines Ms Young’s opinion that individuals are unwilling to report incidents through fear. The evidence of the Appellant himself indicates a resolve to make a complaint in the event of inaction by the police. We are unable to give any real weight to the negative responses to the hypothetical enquiries made by the Appellant any more than we would had the responses been positive.

226. We accept that there is no evidence of any prosecution or conviction of hate crimes against LGBTI individuals. There is also a lack of data in relation to the occurrence of hate crimes and, as we have observed, few reported incidents of violence. Authorities cannot be expected to investigate or prosecute incidents not raised with them.
227. Whilst we accept that the evidence regarding the work of the CPD and PA provides only limited specific examples of the investigation and sanction, this aspect needs to be considered in the light of the limited number of complaints made in the years to which the reports refer. We are satisfied that both bodies have a willingness and ability to act although we accept that the CPD's powers of enforcement are limited and the PA does not have enforcement powers.
228. Ms Young has not been able to provide any meaningful assistance in relation to these bodies for the reasons we have given. We do not consider it reasonably likely that a gay man would be unaware of the avenues of redress to these bodies which are available or of the support and advocacy which the NGOs can provide (as any search of the internet would reveal; as happened in this appeal). The online presence of the NGOs is evident.
229. We are satisfied that there exists in Tirana an effective system of protection should an openly gay man face a risk of harm. The authorities in Tirana are willing and able to provide such protection to the standard required under the Refugee Convention and the Qualification Directive. Redress is also available in response to discrimination which an openly gay man might face by way of complaint to the CPD and/or PA. Such discrimination is unlawful in Albania.

#### **D: Internal Relocation**

##### *Relocation to Tirana*

230. Mr Thomann accepts that the position outside Tirana may be "more challenging and isolating" but submits that the Appellant can internally relocate to Tirana to avoid any such risk. Mr Chelvan accepts that Tirana is a more liberal environment but contends that, even there, the Appellant would face risk either generally as an openly gay man or from his family and friends who could find him there. Mr Chelvan asserts that the only area of Tirana in which the Appellant might avoid risk is the "Blloku" which is a small area. Mr Thomann accepts that, if the Appellant were limited to living in that area to avoid risk, it would be unduly harsh to expect him to relocate but submits that this is not supported by evidence.
231. We have already reached our finding that the level of discrimination which an openly gay man may experience in Tirana is insufficient to reach the high threshold to amount to persecution. It was also asserted on behalf of the Appellant that, even if this does not amount to persecution, the obstacles and discrimination he would face

in terms of difficulties in finding and retaining employment and accommodation are such that it would be unduly harsh for him to relocate to Tirana.

232. We have considered the risk of tracing within Tirana by family from other parts of Albania under the heading of “Risk from Family Members in Tirana” above. We therefore turn to deal with the other problems which it is argued the Appellant or someone in his position would face.

### *Employment and Accommodation*

233. Ms Young pointed to difficulties which she said the Appellant would face finding a job without family connections in Tirana. She also said it was unusual for individuals to live alone in Albania and that this would raise suspicion.
234. The FFM Report at [B/410], albeit dealing with the position of lone women states that although “[s]ocietal stigma does exist to some extent for both victims of domestic abuse and trafficking, but this is less of a problem for women in Tirana where it is not uncommon for women to live alone.” Ms Young’s response to this reference is that it does not mean that women live alone but rather that they live on their own with other women (see [B/91]). She states that “[a]ccommodation in Albania is not set up for single occupancy”. Mr Thomann drew our attention to the evidence of the account of a young man who had previously been housed in the STREHA shelter in Tirana having found a small apartment and a job as a journalist (albeit with the assistance of STREHA) ([B/606]). Ms Young’s position is also at odds with the observations of the Albanian Ombudsman cited in the FFM Report at ([B/546]) that “[w]e are rapidly advancing to Western living of life. There is big cultural change in Tirana. It’s not just single mothers, but single women living alone; working; paying rent”. Ms Young acknowledges in her responses to the Respondent’s written questions that it would be harder for a single female to locate alone in Tirana than a single male.
235. Mr Thomann accepts that the STREHA shelter has only eight beds. In the account of her meeting with the Director of STREHA, Ms Marsida Cela is reported by Ms Young to have “stressed the extreme shortage of funding (donor dependent) to allow them to try to fulfil their aims, especially in their desire to accommodate more than the 8 that they can now take, as well as their hope to keep track of them once they leave the shelter, ideally for a couple of years.” Ms Cela also stated that STREHA tries to support all 18-25-year olds who apply with six months accommodation and support in gaining assistance and obtaining employment and accommodation but “they are overstretched and unable to give the services they would like to.” ([B/29]). Ms Young said in her oral evidence that she had been told by Ms Cela that the shelter “constantly” had to turn people away whereas in her report she describes this as “sometimes they just have to turn people away” ([B/89]). We consider Ms Young’s initial position to be the more reliable.

236. Mr Thomann drew our attention to the ERA 2016 report cited in the May 2017 CPIN which adds that the Albanian government assists the shelter by providing food and that in 2015, the shelter was able to assist eighteen beneficiaries ([B/659]). The HRW Article at [B/606-7] also refers to some support being provided by the Dutch embassy (although notes that the shelter is running out of funds). The article, published in November 2017, also refers however to efforts made by the writer of the article who raised the issue with Tirana's mayor at a meeting. He reports as follows:

"That afternoon, I met with Tirana's mayor, Erion Veliaj. I told him I was impressed by the shelter and asked if the city could support it. "Yes" he said "Let them send me a proposal, we must be able to find some money for this service." In the evening, I reconnected with Rajan, Valmir, and the shelter staff at the opening of the Pride Photo Award exhibition.....I told them the possible good news. "Let's hope the Mayor will keep his promise," Valmir said cautiously."

There is no evidence to show that the Tirana authorities have provided funding since then.

237. We observe that Mr Pinderi gives his views on relocation to Tirana in his October 2018 statement:

**Question:** *Is it possible to relocate in Albania without your family being able to locate you?*

**Answer:** *Tirana, the Albanian capital is the largest city in the country. For members of the LGBT+ community it represents the hope of starting a new life. But, in my opinion after the initial time people start to realize that the liberal atmosphere that one can notice while visiting it for the first time a false atmosphere that hides in reality the same widely homophobic Albanian society. Also family connections are important: important and crucial in renting a house, in finding a job and in establishing your position in the society. For this reason you questions about where you are from and who your family is are routinely asked. And because Albania is a very small country people cannot stay hidden from their extended families.*

Furthermore, the strong family connections that are typical for Albanian society makes it impossible to live a free life and be in an unnoticed existence.

The lack of services, including the lack of a minimum of mental health care in Tirana is a factor that worsen the situation for the LGBT+ community. Being alone in a city with high rates of rent, that doesn't offer security and sustainable employment and on the other side it is still not inclusive and accepting towards same sex relationships can turn out to be quite a difficult challenge."

Whilst we take note of what is there said, we repeat our earlier observation that, notwithstanding the difficulties to which he refers, he was able to live as an openly gay man and LGBT activist in Albania for at least ten years.

### **Socio-Economic Factors**

238. In her written responses to the Respondent's pre-report questions on the position in relation to employment ([B/92]), Ms Young refers to a report dated 2015 which describes unemployment amongst young people reaching up to 35%. She also refers to a report entitled "Trading Economics" dealing with Albania's employment rate for 2012-18 which is said to show that the employment rate in Albania decreased to

57.30% in the second quarter of 2018 compared with 59.20% in the first quarter. Employment is said to have averaged 54.09% from 2012 to 2018 reaching an all-time high for the first quarter of 2018.

239. Our attention was drawn to the employment statistics contained in the EU 2018 Report. The figures show, for 2016, an unemployment rate of 15.2% (15.9% for males and 14.4% for females). However, the youth unemployment rate (15-24-year olds) is said to be 36.5%. The unemployment rate for those aged 25-64 years having completed at most secondary education is 11.8% ([B/321]). Those compare with figures given for 2015 as follows: 17.1% unemployment (17.1% for males and females), youth unemployment of 39.8% and unemployment for the 25-64 years age group of 12%.
240. Ms Young was asked whether the statistics reflect the situation on the ground. Mr Thomann asked, for instance, about the existence of a “grey market”. Her evidence in this regard was that this certainly exists but that family connections would be even more crucial to the finding of a job in that market than more generally. We note however the evidence in the HRW Article relating to a young man previously accommodated in the STREHA shelter who had been assisted by that organisation to find an apartment and a job as a journalist which suggests that the LGBT NGOs might also be of assistance in this regard.
241. Ms Young also refers ([B/41-42]) to a Trading Economics Report which records wages as increasing to an all-time high of “60500 ALL” per month in the second quarter of 2017 (equivalent to approximately £430 at current rates) and minimum rates of accommodation as 800-2000 leks<sup>1</sup> (about £80-£149 per month). That is consistent with the FFM Report which gives a figure for a one-bedroom apartment of the equivalent of £100 per month.

### *Findings in Relation to Internal Relocation*

242. Drawing together the strands of evidence on the factors relevant to the reasonableness of relocation to Tirana, we make the following findings. In so doing we take account of our earlier findings in relation to the situation faced by an openly gay man in Tirana, the risk that he may be traced by family members or others wishing him harm and the protection available to him.
243. We do not accept the assertion that a single gay man could not live alone and we find that it is an option that is reasonably open to him. The evidence of the Albanian Ombudsman to the Home Office Fact-Finding Mission is that Tirana in particular is experiencing a cultural change and “rapidly advancing” to a Western way of life where single people (in that context single women) do live alone. Ms Young

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<sup>1</sup> We believe Ms Young intended to refer to 8000 to 20,000 Albanian lek which would equate to the sterling equivalent she gives



accepted that the position of a single woman living alone would be more challenging than that of a single male.

244. We accept that STREHA has limited accommodation available to access their services. The accommodation is reserved for those in the 18-25 age group and there are only eight beds. Ms Young's evidence has been inconsistent. We consider her first position to be more likely correct (that "sometimes" STREHA had to turn people away – and consistent with the evidence of Mr Hazizaj) than her later evidence that people are "constantly" turned away.
245. If a gay man is able to access employment there is no evidence of any real barrier to him finding paid accommodation. We have referred to the example of a young man who was accommodated by STREHA who was able to find a job as a journalist and accommodation in an apartment when he left the shelter. Ms Young relied on evidence indicating that the cost of accommodation in Tirana is not disproportionate to the average wage.
246. The unemployment level for young people (under 25) is reported on the most recent figures to have been 36.5% in 2016, representing an improvement on the previous year. Unemployment is reported to be in general lower for those over 24 years (11.8%). We have already made reference to the fact that not all gay men will wish to behave in an identical manner. Not all gay men will wish to disclose their sexuality when applying for a job or to their work colleagues once they have found a job. We accept that discrimination in employment for gay men who do wish to disclose their sexuality at work may make it more difficult for those men to readily find and retain work. We accept that this may be disheartening and at times a challenge, but a remedy is readily available.
247. There is the availability of redress in the form of complaint to the CPD and/or PA in the event of discrimination, such discrimination being unlawful in Albania. Complaints can also be made to LGBT NGOs which the evidence suggests are prepared to take those complaints forward with the Albanian authorities. We have already accepted that the evidence shows that the CPD and/or PA are willing to act. Whilst they may have limited powers of enforcement, there is evidence that they do take forward investigations and there is no evidence that those investigations or actions are protracted so that an individual making complaint is likely to obtain a form of redress within a reasonable period.
248. It is undisputed that the Appellant in this appeal was able to find work within a very short period of arriving in Tirana, albeit with the assistance of a friend to whom he did not disclose his sexuality. We have referred to evidence which suggests that the LGBT NGOs may be able to provide some assistance. We are not provided with

evidence that the difficulties of finding employment in Tirana are such that it would be unduly harsh for that reason to relocate to Tirana.

249. We have already noted that there is currently no legal recognition of same-sex relationships in Albania although there is evidence that the PINK Embassy is still actively campaigning for such recognition. However, we have already referred to the example of Mr Pinderi who was in a same-sex relationship whilst living in Albania and there is no evidence that the lack of legal recognition caused him and his partner any serious difficulties such as might give rise to undue harshness on that account.
250. In general, although we accept that the situation in Tirana is far from perfect and that discrimination against gay men does arise, in particular, as regards employment and healthcare, even considered cumulatively such discrimination is not at a level that it would be unduly harsh for an openly gay man to relocate to Tirana. Nevertheless, each case will require to be assessed on its own facts taking into account an individual's particular circumstances including education, health and the reasons why relocation is being addressed.

## COUNTRY GUIDANCE

251. We give the following guidance on the general issues as follows:

- (i) Particular care must be exercised when assessing the risk of violence and the lack of sufficiency of protection for openly gay men whose home area is outside Tirana, given the evidence of openly gay men from outside Tirana encountering violence as a result of their sexuality. Such cases will turn on the particular evidence presented.
- (ii) Turning to the position in Tirana, in general, an openly gay man, by virtue of that fact alone, would not have an objectively well-founded fear of serious harm or persecution on return to Tirana.
- (iii) There is only very limited evidence that an individual would be traced to Tirana by operation of either the registration system or criminal checks at the airport. However, it is plausible that a person might be traced via family or other connections being made on enquiry in Tirana. Whether an openly gay man might be traced to Tirana by family members or others who would wish him harm is a question for determination on the evidence in each case depending on the motivation of the family and the extent of its hostility.
- (iv) There exists in Tirana a generally effective system of protection should an openly gay man face a risk of harm in that city or from elsewhere in Albania.
- (v) An openly gay man may face discrimination in Tirana, particularly in the areas of employment and healthcare. However, whether considered individually or cumulatively, in general the level of such discrimination is not sufficiently serious to amount to persecution. Discrimination on grounds of sexual

orientation is unlawful in Albania and there are avenues to seek redress. Same-sex relationships are not legally recognised in Albania. However, there is no evidence that this causes serious legal difficulties for relationships between openly gay men.

- (vi) In general, it will not be unduly harsh for an openly gay man to relocate to Tirana, but each case must be assessed on its own facts, taking into account an individual's particular circumstances, including education, health and the reason why relocation is being addressed.

## **THE APPELLANT'S APPEAL**

252. There is little dispute over the facts of the Appellant's case. It is accepted that he is a gay man. It is accepted that he suffered serious harm in the past from family and friends in his home area. It is accepted that he cannot return to that home area because of the presence there of those who may wish to do him harm if he were to live there openly as a gay man.
253. It is also not disputed that the Appellant asked a police officer (both in his home area and in Tirana) in hypothetical terms whether the officer(s) would be prepared to help a gay man if faced with violence and that he was told they would not. The Respondent accepts that the level of protection available in the Appellant's home area is "questionable".
254. We accept that the Appellant wishes to live openly as a gay man. In his case, and based on his oral evidence, this means that he wishes to tell friends that he is gay but would not do so until he gets to know them. If invited to enter into a relationship with a woman, he would refuse and would tell those who tried to set up the relationship that he is not interested in women. He has not had any same-sex relationships with men in the UK other than of brief duration. We accept though that this is not because he does not want to enter into such relationships in the future. The Appellant has a reticence about expressing his orientation. He only discusses his sexuality with friends when he gets to know them. That is not a relevant factor in this case.
255. We have concluded that in general an openly gay man in the Appellant's situation would not face a real risk of violence on return to Tirana.
256. We take into account the Appellant's case that he has family members (and family members of his ex-fiancée) living in Tirana and that he fears that they would discover his presence there and would report back to family members in his home area who would wish him harm. We consider as speculative that either he would meet those family members randomly in Tirana or that, if he did, they would do him harm. He did not encounter them during the four months he was there previously. Although he said he was in hiding, he admits that he was working (in a public place: a car wash). He has also now given evidence that he was living for about a week in a hotel and also said that he slept rough on the streets for a short period. We do not

accept that he was hiding as he claims. We note Ms Young's evidence that the whereabouts of an individual would probably become known within six months by word of mouth or via registration checks and sooner if that person were openly gay as the individual would excite more interest. She did not provide any specific examples of openly gay men being traced to Tirana or being harmed in that way.

257. We also consider as speculative that the Appellant's family members in Tirana or in his home area would wish him harm if they discovered his presence in Tirana. The Appellant himself said that he had no information that his family (either in Tirana or his home area) were looking for him. The Appellant said that his uncle with whom he lives in the UK visits family in Albania regularly and has not mentioned his presence in the UK because he fears that if he disclosed that the Appellant was staying with him, "he would lose them like I did". That assertion suggests that the Appellant has been ostracised by his family and not that they are actively seeking him out to do him harm. There is no indication that the Appellant's family have asked his uncle whether he has had contact with him. The Appellant's evidence is that his family consider him to have brought shame on the family. In those circumstances, we think it reasonably likely that they would wish to ignore any connection with him if his whereabouts were discovered. We find that provided the Appellant did not relocate to his home area, his family members would not seek him out to harm him.
258. In any event, as we have found generally, there is a sufficiency of protection by the police in Tirana in the event of any risk of violence. The Appellant could therefore seek that protection from the police. We recognise that he said he would not go to the police because they would not help him, but his unwillingness is not due to a fear of persecution by the police and we have found on the evidence that there is a willingness and ability to protect.
259. If the police were to decline to help the Appellant because of his sexual orientation (which we consider unlikely on the evidence), the Appellant can seek redress from the institutions which exist. Indeed, the Appellant said when asked what he would do if refused help because he was gay that he would appeal because he was being treated differently.
260. That brings us to consideration of any risk that the Appellant would face discrimination in Tirana. We accept that the evidence does show that there is some discrimination in finding accommodation and finding and keeping employment which may well adversely affect the Appellant's ability to find work and accommodation in the short term. We do not suggest that the Appellant would be able to access the STREHA shelter. He is on the cusp of falling outside the age group assisted by the shelter and there are limited resources. STREHA and the other LGBT NGOs in Tirana are however able to offer other assistance. We have regard to the evidence that STREHA helped one young man who previously resided in the shelter to find work and accommodation. If the Appellant faces discrimination when seeking work and accommodation, he can seek help from the LGBT NGOs who will

be able to make a complaint on his behalf. Such discrimination is unlawful under Albanian law.

261. We also take into account that the Appellant was able to find work during the short period when he lived in Tirana previously. We accept that this was with the assistance of a friend to whom he had not disclosed his sexuality. However, given the way in which the Appellant behaves even in the UK, we do not accept that the Appellant would disclose his sexuality when applying initially for a job or accommodation. We do not accept that the level of discrimination is such as to amount to persecution. The Appellant does not make a claim under Article 8 ECHR. In any event, there are institutions in Albania (particularly the CPD) whose role it is to protect those minority groups affected by discrimination.
262. We have made some general observations about the failure of the Albanian State to recognise the legal status of homosexual relationships. There is insufficient evidence that this interferes to any sufficient extent with the ability of openly gay men to form relationships in order to amount to persecution. In any event, the Appellant is not currently in a relationship nor has he had any relationships other than of very short duration.
263. The Appellant is a young man in good health. He has a basic level of education in Albania.
264. Taking together all the factors relevant to the internal relocation issue, we do not consider it unduly harsh for the Appellant to relocate to Tirana.

### **Summary of Conclusions on the Appellant's Appeal**

265. The Appellant does not have an objectively well-founded fear of persecution on return to Tirana. He is unlikely to face any risk of violence generally or from his family members there. In the event that he faces any risk of random violence or violence from his family members, he can look to the police to offer him protection. They are willing and able to protect him. It is not unduly harsh for the Appellant to relocate to Tirana. For those reasons, the Appellant's appeal fails.

### **DECISION**

**The Appellant's appeal is dismissed.**



Signed  
Upper Tribunal Judge Smith

Dated: 22 March 2019

**ANNEX A: ERROR OF LAW DECISION**



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

**THE IMMIGRATION ACTS**

**Heard at the Royal Courts of Justice**

**Promulgated**

**On 16 April 2018**

**.....1 May 2018.....**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**BF**

**(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Mr S. Chelvan, Counsel

For the Respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is a citizen of Albania, born in July 1994. He arrived illegally in the UK in March 2015. On 5 November 2015 he was arrested for a sexual assault and on 18 November 2015 sentenced to a period of 28 days' imprisonment. The full particulars

of the offence, the precise identification of the offence and the court details, are not clear from the documents before me, but nothing turns on those details, except as further explained below as to the appellant's reasons for committing the offence.

2. He was removed from the UK on 17 December 2015 but returned in April 2017 when he was encountered at the docks at Dover. After removal directions were set he claimed asylum. His claim was refused in a decision dated 22 June 2017.
3. His appeal against what was a decision to refuse his protection claim, came before the First-tier Tribunal on 31 July 2017, whereby the First-tier Tribunal Judge ("the FtJ") dismissed the appeal on all grounds.
4. The respondent now accepts that the FtJ erred in law in her decision in various respects, such as to require her decision to be set aside.

*The basis of claim and the FtJ's decision*

5. The appellant's claim is based on a fear of persecution on account of his sexuality as a gay man. The sexual assault of which he was convicted in the UK arose as a result of the appellant's wish to prove to his friends that he was not gay, so he accosted a woman in the street and kissed her.
6. The FtJ accepted the appellant's claim to be gay, in particular on account of the evidence given by a witness, SS, called on his behalf, whom she found to be credible. She accepted her evidence that the appellant told her in 2015 that he was gay. She accepted the appellant's reasons for not disclosing his sexuality when arrested for the sexual assault in 2015 or in the screening interview.
7. She also accepted that in the light of the background evidence in relation to the attitude of Albanian society towards LGBT people, the appellant had given credible reasons for keeping his sexuality secret from the Albanian community in the UK. She found that the appellant's credibility was not undermined by the fact that he could not remember the names and addresses of the gay clubs that he visited in 2015. Likewise, she concluded that his credibility was not undermined by the delay in not claiming asylum earlier than he did.
8. The FtJ also accepted that after he returned to Albania in 2015 his family and the community where his family lived found out about his sexuality from a photograph of him kissing P, a man with whom he had a one night stand in June 2015 whilst he was in the UK. The photograph was put on Facebook and circulated.
9. The appellant's account was that after the photograph was revealed in Albania he was beaten up by his former friends because the photograph confirmed to them that he was gay. Two months later his father found out about the photograph and also beat him up and threatened to kill him.
10. He agreed to his father's demand that he marry a female in order to stop the abuse. His fiancée's family came to take him out for coffee but instead took him to a park,

accused him of dishonouring them by being gay and then beat him up. The appellant went home but his father and uncle also beat him. He was about to kill himself but woke up in hospital, taken there by his uncle's wife. On his release from hospital he fled to Tirana.

11. The FtJ accepted the reliability of a letter said to be from the hospital in Albania which referred to the appellant's admission there on 16 November 2016. His account of how he obtained the letter was found to be credible.
12. She referred to *HJ (Iran) v Secretary of State for the Home Department* [2010] UKSC 31 and background evidence. She concluded at [62] that there was a "striving" (presumably 'thriving') LGBT community in Tirana. She found that "because of this the appellant would be able to live in Tirana as a homosexual without being persecuted".
13. At [63] she said that in the UK the appellant had the opportunity to express himself openly as a gay man but did not do so, not telling any of his friends about his sexuality. She said that the only person he disclosed his sexuality to was the mother of one of his friends, which she surmised was because he saw her as a mother figure.
14. She thus concluded that:

"the appellant has a preference to live discreetly as a gay man and this was not because he feared persecution but because he wish[ed] to do so...if the appellant returned to Albania he would conduct his life in the same way."
15. She then went on to find that the appellant does not have to return to his home area and that he could seek help from STREHA, which she described as a shelter for LGBT youth who are homeless, or living in a hostile environment. She also concluded that the appellant would be able to access one of the support groups which provides support for LGBT persons, and noted that the police in Tirana are now trained to deal with hate crimes, including those relating to LGBT people and are willing and able to prosecute such crimes.
16. She found then, that the appellant "need not fear being harmed by his friends and family members which is one of his concerns" and that he could safely return to Albania "based on what the objective evidence says". She further concluded that he was fit and well which meant that he should be able to find employment and would suffer no hardship if he relocates to Tirana.
17. She dismissed the Article 8 ground of appeal in terms of family and private life, concluding that whilst adaptation and integration would not be immediate or initially comfortable, there was no evidence that those things would not be achievable.

#### *The grounds of appeal*

18. It is only necessary to summarise the grounds. Ground 1 contends that the FtJ erred in not finding that the appellant was a victim of past persecution on the grounds of



his sexual identity as recently as November 2016. Ground 2 asserts that the FtJ erred in her application of *HJ (Iran)* in terms of the extent to which gay men would be able to achieve effective protection in Albania, and ground 3 suggests an error of law in the assessment of how the appellant would behave on return to Albania.

19. The error advanced in relation to ground 1 is in terms of the lack of a conclusion by the FtJ that the appellant was a victim of past persecution on account of her acceptance of the credibility of the appellant's claim as to past events. That past persecution was relevant to future risk. Further, his evidence was that he modified his conduct in Tirana due to a fear of harm.
20. In relation to ground 2, relying amongst other things on the unreported decision of *KL v Secretary of State for the Home Department* [2015] UKAITUR AA/02967/2014 and the country background material, it is asserted that it is evident that there is a real risk of persecution for openly gay men and that the second limb of *HJ (Iran)* was established before the FtJ. The FtJ therefore erred in her conclusion that there was a viable internal relocation alternative for the appellant, including in the alternative taking into account discrimination and plausible unwillingness to avail himself of protection.
21. As to ground 3, it is argued amongst other things that the fact that the appellant had been attending gay bars since 2015 and was publicly affectionate with another man which was disclosed in the photograph, makes it clear that the appellant had not been acting discreetly in the UK. Further, in Albania the appellant's sexual identity is already known by his family and his conduct in Tirana would be motivated by a fear of harm from his friends and family. In addition, the appellant would have to prove that he is straight in order to avoid persecution, as he did in relation to the sexual assault in the UK and his agreement to marry a woman in Albania.

*The respondent's position*

22. As already indicated, it was accepted on behalf of the respondent before me that the FtJ had materially erred in law in various respects. The respondent's position is as set out in Mr Jarvis' very helpful written submissions dated 13 April 2018. I summarise as follows.
23. It was conceded that the FtJ had not made thorough findings on the appellant's claimed past persecution, including in terms of the risk from his father who the appellant asserts would be able and willing to find him in another part of Albania away from the home area.
24. It was also conceded that the FtJ erred in concluding that the appellant would live discreetly on return because he had done so in the UK, in the light of the appellant's evidence, the accepted findings and the positive credibility findings generally.
25. The FtJ had also erred in not apparently taking into account the unreported decision of *KL*, notwithstanding that that decision itself makes it clear at [26] that it does not purport to decide any matters of principle. However, the FtJ had not obviously dealt

with the submission that the STREHA shelter was, to summarise, limited in terms of what it could practically offer the appellant.

26. Likewise, it is accepted that the FtJ had not apparently engaged with the appellant's own background evidence in respect of the issue of implementation of legal reforms and the general nature of conditions for gay men in Albania as a whole or in Tirana in particular. Further, the FtJ's findings are inconsistent with her own observations about the underlying heteronormativity in Albanian culture.
27. Although recognising that the Upper Tribunal is not bound to accept any of the respondent's concessions or observations, it is acknowledged that if those are accepted, the appeal would have to be re-decided in respect of the question of the appellant's behaviour on return and the issues of risk and internal relocation.

### *Conclusions*

28. As I indicated at the hearing, taking into account the grounds of appeal and the respondent's concessions, I am satisfied that the FtJ erred in law such as to require her decision to be set aside. In particular, I am satisfied that on the basis of the FtJ's positive credibility findings, the FtJ erred in not making the further finding that the appellant had been subjected to persecution in Albania as set out in his account.
29. I am satisfied that the FtJ erred in deciding that the appellant would act discreetly in terms of his sexuality on return for the reasons that she gave at [63]. Both parties submitted that it was not appropriate at this stage to make a finding about how the appellant would behave on return because that is a matter that would be informed by further argument at the next hearing. I therefore make no further finding in that respect.
30. Mr Chelvan confirmed that it was not argued that the appellant's family would find him wherever he was in Albania, and that the point referred to at [22] of *KL* is not relied on (modification of behaviour where the fear of persecution is not objectively well founded).
31. In response to the Secretary of State's written submissions, Mr Chelvan provided a supplementary skeleton argument dated 15 April 2018 which, amongst other things, sets out the appellant's position in relation to the scope of any re-making of the decision.
32. Because, apart from anything else, the parties agreed that it was appropriate for this appeal to be linked to two other appeals before the Upper Tribunal raising similar issues, it was not possible to proceed to a re-making of this decision. Mr Chelvan's supplementary skeleton argument is helpful in setting out the position on behalf of the appellant in relation to the re-making but the approach to the re-making and its scope is a matter that will be decided by the judge or judges seized of the appeal at that stage.

33. The only thing further in this respect that I think it is necessary for me to say is that the findings of fact made by the FtJ, save as infected by the error(s) of law, are to stand.
34. The other cases to which it is proposed to link this appeal are *MB (Albania)* (PA/04051/2017) and *AG (Albania)* (PA/05987/2017), which are cases in which I understand the same solicitors are acting. Mr Chelvan's supplementary skeleton argument suggests that in relation to the latter case it is hoped that case management directions will facilitate the linking of the cases and provide for directions as to their future progress.
35. This appeal will therefore be listed for further hearing as soon as practicable. It does appear to me at this stage to be appropriate for this appeal to be listed with *MB* and *AG* in respect of which directions may be given in due course.

Upper Tribunal Judge Kopieczek

24/04/18

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

Given the nature of the claim and the background to it, 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.

**ANNEX B: INDICES TO BUNDLES OF BACKGROUND EVIDENCE**

**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**BETWEEN**

**BF (ALBANIA)**

**Appellant**

**AND**

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

**Respondent**

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5.	Asylum Research Centre, ‘A Note on the Reference to NGOs in the Guidance Section ‘Protection in the UK Home Office Sexual Orientation and Gender Identity Country Policy and Information Notes’, dated October 2018	97-103
6	IPPF-EN, ‘How Sexuality Education is Improving Young People’s Lives in Albania’, dated 30 <sup>th</sup> July 2018	104-111
7.	Council of the European Union, ‘Conclusions on Enlargement and Stabilisation’, adopted on 26 <sup>th</sup> June 2018	112-139
8.	PINK Embassy, ‘66% of Albanian teachers stay silent when pupils are bullied because of homophobia and transphobia’. dated 01 <sup>st</sup> June 2018	140-142
9.	PINK Embassy, ‘PINK’ Embassy launches national campaign “Equality in Marriage”, dated 22 <sup>nd</sup> May 2018	143-144

10.	PINK Embassy, 'TIRANA RAISES THE LGBTI FLAG!'; dated 21 <sup>st</sup> May 2018	145-146
11.	Historia IME, 'Regional conference "Greasing the wheels of the criminal justice system"', dated 18 <sup>th</sup> May 2018	147-148
12.	Historia IME, 'Alcanca LGBT and Pro LGBT launch "PRIDE in Albania", project', dated 18 <sup>th</sup> May 2018	149-150
13.	ILGA Europe, 'LGBTI Enlargement Review 2017', dated 17 <sup>th</sup> May 2018	151-181
14.	ILGA Europe, 'Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2018 – Albania', dated 14 <sup>th</sup> May 2018	182-183
15.	Historia IME, 'Tirana Gay Pride, love won again', dated 14 <sup>th</sup> May 2018	184-185
16.	United States Department of State, '2017 Country Report on Human Rights Practice: Albania', dated 20 <sup>th</sup> April 2018	186-211
17.	ILGA-Europe, 'Albania and FYR Macedonia accession talks recommended', dated 19 <sup>th</sup> April 2018	212-213
18.	Prishtina Insight, 'Albania's Layered Homophobia', dated 18 <sup>th</sup> April 2018	214-217
19.	European Commission, Commission Staff Working Document, Albania 2018 report, dated 17 <sup>th</sup> April 2018	218-324
20.	Pinderi, Kristi, 'Expert Opinion regarding the situation of Albanian LGBT people and a Review of Legislation vs its Enforcement' dated 15 <sup>th</sup> April 2018 (attached to sources referred to within the document).	325-396
21.	LGBTI Equal Rights Association for Western Balkans and Turkey (LGBTI ERA), 'Open Lectures on LGBTI Rights in Albania's High Schools Face Homophobic Backlash', dated 30 <sup>th</sup> March 2018	397-400

**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

**BETWEEN**

**BF (ALBANIA)**

**Appellant**

**AND**

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

**Respondent**

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2.	United Nations Albania, 'Being LGBTI in Albania – Alesio's Story', dated 09 <sup>th</sup> January 2018	561-564
3.	United Nations Development Programme, 'Being LGBTI in Eastern Europe Progress, Drawbacks, Recommendations [Albania Excerpt]', dated 03 <sup>rd</sup> December 2017	565-566
4.	United Nations Development Programme, 'Being LGBTI in Eastern Europe: Albania Country Report [Executive Summary and Key Findings]', dated 23 <sup>rd</sup> November 2017	567-605
5.	Human Rights Watch, 'Sheltering Albania's Gay Youth from Virulent Homophobia,' dated 07 <sup>th</sup> November 2017	606-607
6	Home Office, 'Asylum Claims on the Basis of Sexual Orientation, Experimental Statistics', dated November 2017	608-617
7.	ILGA-Europe, 'Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People in Europe 2017 – Albania dated', 17 <sup>th</sup> May 2017	618-621
8.	Albanian Helsinki Commission, 'Public appeal for the rights and freedom of the LGBTI in Albania', dated 17 <sup>th</sup> May 2017	622
9.	Home Office, 'Country Policy and Information Notice Albania:	

	Sexual Orientation and Gender Identity’, version 4.0, dated May 2017	623-662
10.	Independent Chief Inspector of Borders and Immigration, ‘Inspection of Country of Origin Information, March 2017 report’	663-718
11.	Astraea Foundation, ‘Location: Albania’, undated	719-721
12.	Council of Europe, ‘Preventing and Combating Discrimination on Grounds of Sexual Orientation and Gender Identity in Albania’, undated	722-723
13.	Equinet (European Network of Equality Bodies), ‘ALBANIA: Commissioner for the Protection from Discrimination’, undated	724-728
14.	Home Office Asylum Policy instruction, Sexual orientation in Asylum Claims, Version 6.0 published for Home Office staff on 3 <sup>rd</sup> August 2016	729-769
15.	6 <sup>th</sup> Tirana Gay (P) Ride without Incidents, dated 13 <sup>th</sup> May 2017	770-771
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**CHAMBER**

**BETWEEN**

**BF (ALBANIA)**

**Appellant**

**AND**

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**FOR THE HOME DEPARTMENT**

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3.	May 2018 article on health care for vulnerable groups <a href="http://historia-ime.com/2018/05/22/issues-to-access-the-health-system-for-vulnerable-groups-in-albania/">http://historia-ime.com/2018/05/22/issues-to-access-the-health-system-for-vulnerable-groups-in-albania/</a>	121-123
4.	April 2018 Albania article (untranslated + translated version) regarding civil society’s position on the new CPD <a href="https://www.svri.net/politike/150345/skandali-komisioneri-i-anti-diskriminimit-emerohet-nieriu-i-balles/">https://www.svri.net/politike/150345/skandali-komisioneri-i-anti-diskriminimit-emerohet-nieriu-i-balles/</a>	124-125a
5.	Article regarding same sex marriage, 30 <sup>th</sup> July 2009 BBC on-line – <a href="http://news.bbc.co.uk/1/hi/8177544.stm">http://news.bbc.co.uk/1/hi/8177544.stm</a>	126-127
6.	2017 Human Rights Watch article about same sex marriage - <a href="https://www.hrw.org/news/2017/02/08/albanian-courts-asked-recognize-same-sex-partnerships">https://www.hrw.org/news/2017/02/08/albanian-courts-asked-recognize-same-sex-partnerships</a>	128-130
7.	2018 Tirana Gay pride article – <a href="http://historia-ime.com/2018/05/14/tirana-gay-pride-lov-won-again/">http://historia-ime.com/2018/05/14/tirana-gay-pride-lov-won-again/</a>	131-132



8.	Supplementary letter of Instruction to Mrs Antonia Young by SMA Solicitors dated 29 <sup>th</sup> August 2018	133

**ADDITIONAL DOCUMENTS**

1. Map of Albania
2. Map of Tirana
3. ERA Mission statement
4. Stonewall report entitled "LGBT in Britain: Hate Crime and Discrimination" published 2017
5. Home Office Country, Policy and Information Note entitled "Albania: Women fearing domestic abuse" published December 2017 ("the December 2017 CPIN")
6. Article entitled "PINK Embassy presents the Monitoring Report of the National Action Plan for LGBTI persons in Albania" published 21 May 2018
7. Article reporting interview on 4 October 2018 with Altin Hazizaj of PINK Embassy entitled "LGBTs in Albania: We don't bite"
8. Home Office Statistical Bulletin 20/18 entitled "Hate Crime, England and Wales 2017/18" published 16 October 2018