

Asylum and Immigration Tribunal

MK (Lesbians) Albania CG [2009] UKAIT 00036

THE IMMIGRATION ACTS

**Heard at Field House
on 24th, 25th & 26th September 2008
& 26 November 2008**

Before

**SENIOR IMMIGRATION JUDGE GOLDSTEIN
SENIOR IMMIGRATION JUDGE SPENCER
MRS M PADFIELD JP**

Between

MK

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms B Asanovic, Counsel and Ms E Daykin, Counsel instructed by
Wilson & Co

For the respondent: Ms E Laing, QC instructed by the Treasury Solicitor

- (1) *It cannot be said that without more there is a real risk that a woman without family support in Albania would suffer destitution amounting to inhuman or degrading treatment resulting in a breach of her rights under article 3 of the ECHR or persecution, but each case must be determined on its own facts.*
- (2) *Although it is no longer illegal for consenting adults to have homosexual relations in private, homosexual men known to be members of gay associations and those who visit cruising areas in the centre of Tirana are likely be harassed and on occasions ill-treated by the police and in individual cases homosexual men may be at risk of harm from members of their families.*

- (3) *In general terms, lesbian women do not frequent cruising areas and do not join LGBT organisations. Therefore there is lacking the opportunity for them to be harassed or persecuted by the police.*
- (4) *In general terms in Albania women of lesbian orientation are able to carry on lesbian relationships discreetly without attracting the risk of serious harm. A lesbian woman, whose sexual orientation becomes known, may be at risk of harm from members of her family, particularly if she is from a traditional family from the north of Albania, but each case must be determined on its merits. In such a case, however, it is likely that there would be an adequacy of state protection.*
- (5) *In any particular case where the safety of the return of a lesbian woman to Albania is in issue, it will have to be determined whether she is likely to behave discreetly upon return and if so whether “discretion” is something that she can reasonably be expected to tolerate, in the light of all of the circumstances of the case, including the social norms and religious beliefs commonly held in Albania. Such a person will only establish a right to refugee status if she can establish that the apprehended violation of her fundamental rights is likely to attain a substantial level of seriousness.*

DETERMINATION AND REASONS

The background

1. The appellant is a citizen of Albania, born on 21st November 1982. Her appeal against the decision of the respondent, made on 21st April 2006, to remove her to Albania at a time and date to be notified, following the refusal of her asylum and human rights claims, was dismissed on asylum grounds but allowed on human rights grounds under article 8 of the ECHR after a hearing by Immigration Judge Grant-Duprez in a determination promulgated on 8th June 2006.
2. On 21st June 2006 Senior Immigration Judge Mather ordered reconsideration on the application of the respondent for the following reasons:

“The grounds disclose that the Immigration Judge may have made errors of law for the arguable reasons given in the application.”
3. The grounds for review asserted that the immigration judge had failed to give good reasons for finding that the appellant’s rights under article 8 of the ECHR would be breached if she were returned to Albania. By a reply dated 24th July 2006 the appellant asserted that the immigration judge should have allowed the appeal on asylum grounds and on human rights grounds under article 3 of the ECHR.
4. At a first stage reconsideration hearing before Senior Immigration Judge Goldstein on 15th June 2007 the Tribunal found that the immigration judge had made errors of law in his determination of the appeal but said that there should be a second stage reconsideration of the appeal with all issues at large and by the agreement of the parties’ representatives the positive and adverse credibility findings of the immigration

judge, save for the single finding that “*these people* (which was a reference to the appellant’s mother, brother and possibly her father) *are highly unlikely to have told anyone else*” (which was a reference to her sexuality), should be preserved. The reasons for the decision that there was a material error of law in the determination are attached to this determination as Annex A.

The hearing before us

5. Thus the matter came before us for a second stage reconsideration of the appellant’s appeal. The hearing had previously been listed for 10th, 11th and 12th June 2008 but had been adjourned on the application of the respondent. Shortly before the hearing before us the appellant made an application for an adjournment of the hearing so that further evidence could be obtained but this had been refused. No application for an adjournment of the hearing was renewed by either party before us. Ms Asanovic, however, did indicate that she was waiting for an expert report from Mr Adriatik Bicaku which was due to arrive by 26th September 2008. Ultimately we indicated that we would receive the report if it arrived by 2pm on 26th September but unfortunately Mr Bicaku sent the wrong report. In the event we were not able to complete the hearing on 26th September 2008 and had to adjourn part-heard so that we were able to make directions in relation to receipt of the report from Mr Bicaku together with newspaper advertisements which Ms Laing had sought to invite the appellant’s comments upon together with any comments that Dr Mai might have upon them.
6. Ms Asanovic applied to vary the appellant’s grounds of appeal under rule 14 of the Asylum and Immigration Tribunal (Procedure) Rules 2005 to include allegations of breaches of Articles 5, 10, 11 and 14 of the ECHR. We pointed out that rule 15 did not apply by virtue of rule 29 to a reconsideration of an appeal and we were unable to give such leave. Ms Asanovic suggested that she did not need to amend the appellant’s grounds of appeal which stated that the appeal was brought on grounds under section 84(1)(c) and/or (g) in that the respondent’s immigration decision was contrary to the United Kingdom’s obligations under the Refugee Convention and/or Human Rights Convention by reason of the facts set out in the SEF interview and documents already submitted. We indicated that the appeal before the immigration judge had not been run on the basis that articles 5, 10, 11 and 14 had been infringed and that in any event all issues were likely to be covered by the allegations that the appellant’s rights under article 3 and/or 8 of the ECHR would be infringed if she were returned to Albania.
7. At the adjourned hearing on 26th November 2008 Ms Laing produced certified translations of job advertisements in the 26th September 2008 editions of two Albanian newspapers called “Shekulli” and “Telegazeta” together with untranslated copy pages from the Panorama newspaper dated 26th September 2008.
8. We also heard further evidence from Dr Mai in relation to the newspaper advertisements and received a report from Mr Adratik Bicaku dated 23rd November 2008. Subsequently it was clarified that Mr Bicaku had not intended to say that in Albania suicide was the main cause of death.

9. We also granted leave to Ms Asanovic to recall the appellant to give evidence about a recent contact with her mother as a result of which the appellant produced a handwritten additional statement.
10. In the absence of objection from Ms Laing, we gave Ms Asanovic leave to put in a further report from Ms Schwandner-Sievers, who since the appeal had been adjourned had been on a fact finding mission to Albania from 28th September 2008 to 2nd October 2008, notwithstanding that Ms Schwandner-Sievers was not available to give oral evidence before us due to a prior commitment.
11. In order to accommodate the expert witnesses the appellant gave evidence last and the evidence of one of the expert witnesses was interposed before that of the other was completed. Nevertheless in order to avoid confusion we set out the evidence of the appellant first and that of the expert witnesses one after the other in its entirety.
12. We should also mention at this stage that at the hearing on 26 November 2008 it was agreed that Counsel should submit their closing submissions in writing.
13. Following their receipt, the appellant's representatives applied by a letter dated 9th January 2009 to put in evidence, letters from Ms Schwandner-Sievers and Dr Mai respectively which sought to respond to what the appellant's representatives said were criticisms harmful to their honesty and reputations contained in the written submissions of Ms Laing, relating to their lack of knowledge of the newspaper advertisements of jobs in Albania. In our view there could be no justification for admitting further evidence at such a late stage in the proceedings. It should have been apparent to any reasonable representative that there might be some comment on the failure of the experts to mention the newspaper advertisements. Indeed Dr Mai was specifically recalled to deal with them and explained why he did not know about them. The appellant's representatives had the opportunity of recalling Ms Schwandner-Sievers but chose not to do so and instead and without having previous leave successfully sought to adduce further evidence from her in the form of a further statement which showed that she was invited to comment upon the newspaper advertisement that could have dealt with her reasons for not knowing about them. We gave a considerable amount of latitude to the appellant's representatives to present further evidence at short notice during the course of the hearing, notwithstanding non-compliance with directions given by the Tribunal as to the admission of evidence.
14. We set out in Annex B the sources of the evidence and other material we have had regard to in determining this appeal.

The appellant's evidence

The appellant's evidence in chief

15. The appellant chose to give evidence before us. During the course of her evidence two different interpreters were used. The appellant expressed herself able to understand them and to communicate with them. She adopted the contents of the four statements which then existed as being true and correct to the best of her knowledge. She was content to adopt them as part of her evidence-in-chief. Her case is that she was born in Tirana and is of Muslim ethnic origin. She had one

brother who was eight years older. She was single and lived with her parents and brother in Tirana. Her parents' marriage had been an arranged marriage. Her father was a carpenter by trade and had worked for many years as a backstage assistant at the Academy of Art in Tirana. Her father has been an alcoholic ever since she could remember and became violent when inebriated. He used to beat all of the family until her brother was old enough to stand up to him. It was unthinkable for her mother to leave her father or to complain to the police. The appellant was educated from the age of 7 until 15 but then had to leave school because there was not enough money to pay for her tuition fees and school materials. She enjoyed going to school and would have liked to become a social worker. After she left school she remained at home.

16. The appellant's case is that she had felt sexually attracted to women, which were feelings that she fought against for some time. She had known that she was a lesbian since she was 16 years of age. From the age of 17 her family had tried to marry her off several times but she refused to marry because she knew that she was gay. Her refusal to marry became a huge issue for her family but they never suspected that she was gay. When she was 20 she met a woman called Mira, with whom she began a lesbian relationship. She met her when she used to visit her uncle Pupi near whom Mira lived. Mira was two years older than she was. They became friends and whenever she visited her uncle she spent time with Mira. They would go for sleepovers at each others homes often and were always in contact. Because friendships among women were common their relationship was never suspected.
17. In January 2005 Mira's family arranged for her to marry someone and Mira did not resist. After the engagement was announced Mira started to avoid her. She married in December 2005. The appellant last saw Mira in December 2005. After Mira's wedding her parents' pressure on her to get married intensified. After Mira's wedding she fell into a deep depression and had thoughts of ending her life. She became very withdrawn, started overeating and put on three stones in weight. The pressure to marry continued. She started asking about leaving Albania and decided to come to the United Kingdom because she had a friend here, Esmeralda who was a British citizen of Albanian origin, who had lived in the United Kingdom for a long time and with whom she had been friends when she lived in the same area.
18. In September 2005, during the course of an argument with her mother about getting married, she told her that she liked women and not men. She told her about her intimate relationship with Mira. Her mother was horrified and said the best option was for her to get married immediately. On her brother being informed the following morning, he came into the appellant's room, called her a whore and beat her up by kicking and slapping her. She was very upset and cried a lot during the beating because the appellant believed culturally he did not know how to process the information. Until then they had been very close. She remained in her room for a week with no-one talking to her or looking after her. She believed her father did not care to investigate because of his alcohol problem.
19. She contacted Esmeralda shortly after her family found out about her homosexuality. Esmeralda agreed to help her. She sent a letter of invitation for her to get a visitor's visa and some money. The appellant hired a travel agent to book a flight to the

United Kingdom and also arrange a visitor's visa. The appellant was interviewed at the British Embassy but did not tell them about her problems as she was desperate to leave the country. She obtained a visitor's visa on 20th December 2005. She did not leave Albania until 9th February 2006 because she was waiting for Esmeralda to wire the money for the airfare.

20. In her statement, dated 21st March 2006, she said that she called her family two days after she arrived in the United Kingdom. Her brother picked up the phone. She heard him say "*it's her*". He passed the phone to her mother. She said that she had left without their permission so she was dead to them. She could hear her sobbing. Her mother put the phone down and she had not spoken to her family since. Subsequently, and notably, the appellant told us that she now telephoned her mother every month.
21. It is the appellant's case that she cannot return to Albania because she fears for her life. Although homosexuality is legal in Albania, culturally it is unacceptable. It is seen as a vile and disgusting thing. Her family would have forced her into an arranged marriage if they had found a suitor. If she refused she feared they would have ended up killing her. Her family had disowned her. She had nowhere to go in Albania. The authorities would not help her. If she were returned she would be persecuted by both her family and the community for being gay.
22. In her statement, dated 19 May 2008, the appellant said that if she were returned to Albania she would have to repress her sexuality. If she were able to live on her own, away from her family in Albania, her life would be miserable. She believed she would be called names by people once they discovered her sexual orientation and she would suffer discrimination and harassment. With the economic situation in Albania and her lack of any particular skills, the appellant did not think she could get employment which would permit her to pay for accommodation and have enough money to support herself. Since being in the United Kingdom the appellant has not been ready to join the highly promiscuous gay scene but feels ready to enter into a relationship should she find the right person. She has been visiting a pub in Southend which is known for being a place for gay outings. She has met a lady called "Miriam" at The Cliff. Although they are just friends, she is open to new developments.
23. In her statement, dated 5th September 2005, the appellant said that she had met another friend called Linda at The Cliff. She was very interested in another girl but they were good friends.
24. In examination-in-chief Ms Asanovic drew the attention of the appellant to the discrepancy between what she said in paragraph 37 of her statement dated 11th May 2006 about trying to commit suicide in 2005 by cutting her wrist and the absence of any mention of a suicide attempt in what she told Dr Bell. The appellant initially said that what she said in her statement was true but then when her attention was again drawn to what she told Dr Bell she admitted that what she told Dr Bell was true. She said what she said in her statement was what she had in her head, but she did not do anything.

25. Ms Asanovic then drew the attention of the appellant to the passage in paragraph 26 of the statement, dated 19th May 2008, in which she said that she started going to The Cliff at the end of January of that year. She drew her attention to what she said in paragraph 5 of her statement, dated 5th September 2008, namely that she met Linda at The Cliff last year. Ms Asanovic asked how it were possible if she did not start going to The Cliff until the end of January 2008. The appellant said that she started going at the end of last year and the beginning of this year.
26. Ms Asanovic asked the appellant whether, had she not broken up with Mira, she would have left Albania or stayed. She said she would have left because she could not see any future. Ms Asanovic asked her whether she would have stayed if she could have continued with Mira. The appellant said that she would have left. Ms Asanovic asked her why and her reply was that basically they had no future. Mira's family married her and there was no future for her. Ms Asanovic asked whether if she could have continued with Mira she would have stayed and her reply was "no".
27. At that point the appellant said that she felt ill and wanted to stop giving evidence as a result of which the Tribunal adjourned the hearing until the following day.
28. When the hearing resumed the following day, Ms Asanovic asked the appellant whether if Mira had not got married and they had stayed together she would have stayed in Albania or left. The appellant said her connection with Mira did not have any future in Albania and for that reason they separated. The appellant agreed that they carried on their relationship secretly and discretely. She said that she did not think that they would have been able to continue like that. Ms Asanovic asked whether she could not go to Albania and have another secret relationship with someone else. The appellant said it would be difficult to live in secret with someone else because Albanians judged lesbians in a different way.

The appellant's evidence in cross-examination

29. In cross-examination, Ms Laing asked the appellant a number of questions relating to her asylum interview in April 2006. The appellant said that she remembered answering that it was a crime to be a homosexual in Albania in answer to question 10 and she remembered saying that the penalty was death or life imprisonment. It was put to her that the answer was not true, but the appellant said that it was. The appellant denied that she had exaggerated the position of homosexuals in Albania. She said what she said was her opinion which she believed, and homosexuals were badly treated by everybody in Albania. She denied that she had exaggerated in saying during her asylum interview that her life would be in danger because she could be killed for any reason.
30. When the appellant's attention was drawn to her answer to question 7 in her asylum interview, in which she said that her father had beaten her three or four times in six years because she was gay; initially she said that it was true and that her father had beaten her but when she was asked whether he had beaten her because he found out that she was gay she said she did not remember. When it was put to her that she had never before suggested in her statements that her father had found out that she was gay, she made no answer. Her attention was drawn to paragraph 18 of her statement, dated 11th May 2006, in which she referred to the answer that she had

given in her asylum interview, when she said that her father had beaten her three or four times for being gay. It was pointed out that in her statement she said that this answer was not correct and when she disclosed her sexual orientation to her family her father did not even get involved. She then agreed that what she had said in her statement was true; that her father was an alcoholic and did not want to know about it.

31. The appellant agreed that in paragraph 21 of her statement dated 21st March 2006, she said that her family never suspected that she was gay and that people in her community did not even know that lesbianism existed. She also agreed, that in paragraph 31 of that statement, she said that it was easy to carry on her relationship with Mira as everyone knew that they had been close friends for years. They did not have any trouble seeing each other and sleeping over at each other's places all the time. She agreed that the only people who knew about her relationship with Mira were her mother, because she had told her and her brother, because her mother had told him. She agreed that it had been possible for her to have a three year long relationship in her society without anyone suspecting what was going on and she agreed that she had no problems from the Albanian authorities.
32. Ms Laing drew the appellant's attention to the statement in the first report of Dr Bell as follows:

"From the above I understand that MK left Albania because she was persecuted because of the fact of being homosexual, and that since coming to the United Kingdom she has 'come out' as a homosexual and identified herself with the homosexual community."

She drew her attention to passages in Dr Bell's report. She agreed that she had told him she did not behave in a particularly "gay way" in the way that was common in the gay community although she was quite certain that another gay woman would easily be able to tell that she was a homosexual. She agreed that only her close friends in the United Kingdom knew about her sexuality and she agreed that even in England she tried to keep her sexuality discreet.

33. The appellant agreed that she was in touch with her mother and said that it was once a month. When Ms Laing suggested that her mother was concerned about her situation because she loved her, the appellant said that maybe inside her she did love her and she agreed that she told Dr Bell that she felt loved by her mother. She agreed that she was able to stay at home until she left for England. She told her mother in September 2005 about her relationship with Mira and did not leave until February 2006. She agreed that her brother had not attempted to kill her, that after he found out about her relationship with Mira he was upset, notwithstanding that she remained at home for several months he had not attacked her in any way. She said, however, that when he found out about her homosexuality he became more aggressive towards her. She agreed that her father did not know about her homosexuality before she left Albania. She agreed that he was an alcoholic and in a poor state of health and her mother and brother would have no reason to tell him.
34. The appellant said that what she told Dr Bell, namely that she helped her mother in her work as a seamstress, taking measurements and making deliveries was true.

Later she said she had not done deliveries and Dr Bell had got that wrong. She said that she had been to the centre of Tirana and knew there were hotels, cafes, bars and shops there. She said she did not know whether women worked in those places or not. She said she had been to shops only close at home and did not often go to the centre.

35. She agreed that in her statement dated 21st March 2006 she said she did not want to be trapped with her family. She wanted to be independent and not have a life like her mothers. She agreed that she was really quite intelligent. She agreed that Dr Bell was correct when he said that she read Albanian books and she told him she was reading the work of the novelist Hadara and another novel called 'Wine' which was based on an individual's odyssey.
36. She agreed that she had said in her statement dated 5th December 2008 that she had a few close friends who were Albanian and she felt comfortable about them knowing about her sexuality. She agreed that not all Albanians had bigoted attitudes towards lesbians.
37. The appellant agreed that she had no personal experience about the police attitude towards domestic violence. Neither she nor her mother had reported domestic violence to the police. She said her mother had not reported it because if she had done so she would not have got any help from them.
38. The appellant was asked about members of her extended family in Tirana. She said that she had a maternal uncle called Pupi and no aunts and then said that she had an aunt who was the sister of her father. She said that she was married with two sons aged 20 and 22, who lived with their mother in Tirana. She said Pupi had one son who was 23 years of age.
39. The appellant was reminded that in her statement dated 11th May 2006 she said she had visited a doctor in Albania in 2005 who gave her some medication for her mental health problems which she took over a three to four month period. She said those services were provided free of charge and she went to a clinic during that period.
40. Ms Laing drew the appellant's attention to a discrepancy between what she said in her statement dated 11th May 2006 about trying to commit suicide once only when she grabbed a kitchen knife and tried to cut her left wrist and what she had said to Dr Bell, namely that there had been no suicide attempts or episodes of self-harm. She said what she told Dr Bell was true. She said these things were on her mind but she never did it. She then said that she had started to cut herself with a kitchen knife but she did not do it.
41. The appellant said her mother sometimes brought a newspaper to her house. She said there might be job adverts in newspapers in Tirana but it would be difficult to get a job because you had to know somebody. She agreed that maybe there were newspaper advertisements for jobs. Ms Laing invited the appellant to look at some untranslated newspaper advertisements purportedly from Tirana newspapers, to which there was an objection from Ms Asanovic, which resulted in us giving leave to Ms Laing to produce legible copies of the newspaper advertisements together with certified translations at a later date.

The appellant's evidence in re-examination

42. In re-examination the appellant said her mother worked on black market contracts for the local factory and did sewing for people who lived near their house. She said on rare occasions she may have undertaken deliveries but mostly her mother did it herself.
43. Ms Asanovic asked the appellant why there was a discrepancy between what she was now saying and what she said before about her father knowing about her sexuality. She said what she said was true and maybe she was confused. She said her father was not interested in her and did not want to know anything about her.
44. Ms Asanovic asked her whether her mother said that she missed her. She said that she did. She was asked whether she had asked her to come back. She said that she did but she told her that she was not coming back. She was asked whether she had invited her to come back home to live with her. The appellant said that she had but she did not accept because of the situation. She said that if she went back home she knew they would try to marry her to somebody since they knew that she was a lesbian.

The appellant's evidence when questioned by the Tribunal

45. The Tribunal asked the appellant a number of questions. The appellant said that she had not told her mother she would come back if they did not try to marry her to somebody because she was certain that they would try to do so. She had known her paternal grandparents, the last of which died in 1996. Her parents were born and brought up in Tirana. She did not know whether her father was still working. He was working when she left Tirana, but later he left because of his alcoholism. He worked at the Institute of Arts creating the stages for meetings. By profession he was a carpenter and he prepared the stage for the theatre. He was skilled man. She said he had been employed for a long time at the Institute of Arts, for more than twenty years. She said maybe she got her taste in reading from her father. She recollected that he read a lot of books and he was of average intelligence. He was a well-read man.
46. The appellant said that her brother was not employed when she left Tirana although he had worked as a painter and decorator at different homes. He worked for himself. She said that she had not spoken to her father since she left Albania. There had been no communication by letter. She had not contacted her brother in any way or her uncle or aunt or cousins because she did not have their telephone numbers. Had she got them she would have done so.
47. The appellant was asked why it was that Esmerelda had not made a statement or attended to give evidence for the original hearing or this reconsideration. She said she did not want to get too much involved in her case.
48. The appellant was then asked a number of questions by Ms Asanovic arising out of those asked by the members of the Tribunal. She said that her grandparents were born in a village around Tirana. She said she got the books she read from the library

and knew how to choose them because she checked what books were there and took what she liked. She had many books at home in Tirana but could not remember the number. It was usual to have books in Tirana houses. She said it was her opinion that her father was of average intelligence and was not able to say with whom she compared him. She agreed that he was well-read but she did not know whether he read books and newspapers every day. She did not know if he was working now. As far as she remembered he always went to work even when he was drinking.

The evidence of the appellant in chief when recalled

49. At the adjourned hearing on 26th November 2008 the appellant was recalled to give evidence and relied upon a supplementary witness statement dated 26th November 2008 in which she said that lately her mother had not wanted to speak to her. She said she rang her several times after the last hearing and when she finally got through she spoke to her and asked her if she could come back home and stay a lesbian. She said her mother said “You are not a lesbian. These things don’t exist, only in dreams and fantasies.” She said her mother told her she would arrange a marriage for her through her cousins and said “I will have you live here if you forget those fantasies and get married”. Her mother told her she could not help her find a job until she got her feet on the ground. She asked her mother whether she did not want to help her or she could not help her and she said she did not want to help her. She then put the phone down. She thought her brother or someone else was at home so she would not speak to her. On the last occasion she spoke normally as usual.

The appellant’s evidence in cross-examination when recalled

50. In cross-examination by Ms Laing the appellant explained that when she said her mother spoke normally she meant the way in which she had described when she gave her evidence previously. She agreed with Ms Laing that she wanted the appeal to succeed. Ms Laing suggested to her that she realised that there were a number of things that she needed to show in order to succeed and the appellant agreed.
51. Ms Laing separately suggested to the appellant that one thing was, that her family had rejected her, another, was that she would not be able to get a job if she went back to Albania and further, that her family would put pressure on her to get married. The appellant agreed with each of those propositions. The appellant agreed that she remembered that she had been asked by a member of the Tribunal whether she had telephoned her mother and asked if she could go back.
52. Ms Laing suggested to the appellant that she was aware that some of the answers she gave in cross-examination were not helpful to her case. The appellant confirmed that she was so aware. She agreed with Ms Laing’s suggestion that she now had good reason to make good the damage and that was the reason she had made her further statement.

The appellant’s evidence in re-examination when recalled

53. In re-examination the appellant was asked whether she was aware of what it was that she had said, which made her case not very good. The appellant said that last time the judge asked her if she had contacted her mother to ask if she could go back

home, but her mother never replied. In relation to the appellant agreeing with the propositions that Ms Laing had put to her, Ms Asanovic asked her whether when she said yes she was saying it to show that she agreed or that she had understood the question. The appellant said she thought it was in answer to the question.

54. Ms Asanovic asked if she could explain what she needed to show in order for her case to succeed. The appellant said that she had to show that she would not have any help from her family or anyone else. Ms Asanovic asked her what made her think that she must ring her mother and ask her the questions. She said the reason was that she wanted to find out whether her mother was going to find a person for her to marry as was the tradition and whether she could not be a lesbian. She said that the telephone call was her idea and no-one else's.

The evidence of Dr D L Bell

The evidence in chief of Dr Bell

55. For the purpose of his first report, Dr Bell had interviewed the appellant on 21st May 2008 and 17th June 2008, having received a number of documents from her representatives.
56. Dr Bell first made reference to the report of Dr Michael Seear, who recorded a history of considerable emotional disturbance in the family and the appellant's childhood. He described her going through a period of considerable emotional and mental turmoil when she was trying to adjust in Albania to her homosexual orientation. He had made a diagnosis of a major depressive episode and commented on the conflict and tension in her mind between her desire to come out (as a homosexual) and also her desire to "remain anonymous and not to break the unwritten code in Albania".
57. In relation to his interview of the appellant, Dr Bell noticed that she was cleanly and casually dressed and obviously overweight. She seemed depressed and had a typical depressive facial expression and posture. She told him about her current experiences, namely that she was living in a house with an Albanian friend whom she had known in Albania, called Esmeralda, whom she regarded as her most intimate friend. Esmeralda knew that she was gay and had known this for a long time as she told her over seven years ago. She felt that Esmeralda was different to other Albanians as she did not have "Albanian attitudes". The appellant had two gay friends; the one she saw more often was Mariam, a Portuguese woman whom she met in a pub. She told him she went to a "gay pub" maybe once or twice a week depending on the money situation. One of the pubs she went to was a well-known gay meeting place called 'The Cliff'. Her other gay friend was Linda, who was born in England. They found a way of communicating with each other although the appellant spoke only broken English.
58. Dr Bell noted that it soon became clear that the appellant was overwhelmingly preoccupied with the fear of return. She told him that she often felt very depressed and suffered from what she called "bad thoughts", some of which seemed to circulate around the fact of her gayness and expressed conflict about it. She dealt with her stress by eating and cut herself off from those thoughts. She did not currently suffer from suicidal thoughts but when she contemplated going back to Albania she thought

of killing herself. She had never acted on these thoughts; that is there had been no suicide attempts or episodes of self-harm.

59. Dr Bell noted that the appellant frequently felt very anxious. She often felt someone was following her. She had nightmares most nights. She was worried that people would notice that she was homosexual and she tended not to look into other women's eyes in case she gave the impression that she was. She was firmly identified as a homosexual woman who felt truly herself as a result of living in Britain. She told him that she did not behave in a particularly "gay way", in a way that was common in the gay community, although she was quite certain that another gay woman would easily be able to tell that she was homosexual. She had one important sexual relationship with Mira in Albania, but on reflection she thought that perhaps their relationship was more important to her than it was to Mira.
60. Dr Bell noted that the appellant was born in Tirana in Albania. He wrongly noted that her father worked in a factory and her mother stayed at home. She told him of being ill-treated by her father but she said she felt loved by her mother. She went to school from the age of 6 to 15 but was always near the bottom of the class. After leaving school she stayed at home with her mother who worked as a seamstress from home and the appellant helped her with jobs around sewing (taking measurements, making deliveries). She started doing that at the age of 18 or so until she left Albania at the age of 23. She thought she first became aware that she was homosexual between the ages of 15 and 16. She felt ashamed and as she put it "uncomfortable" about this and kept it hidden. At that time she became depressed.
61. The appellant told Dr Bell that she read Albanian books and was reading the work of the novelist Hadara and another novel called 'Wine' which was based on an individual's odyssey. She tended to go out on Fridays to Saturdays to gay pubs. She felt that life would be intolerable if she were to be returned to Albania and the prospect of return brought suicidal ideation.
62. Under the heading "Opinion and Conclusions" Dr Bell said it was clear to him that the appellant suffered from a psychiatric disorder, namely a depressive order as diagnosed by Dr Seear, of moderate intensity. She also suffered from anxiety disorder which seemed to reach its maximum intensity during the night when she had panic attacks, probably related to nightmares. He understood that the paranoid ideation as deriving from the anxiety disorder and depressive disorder and this did not suggest deterioration into a more organised psychotic disorder. It seemed to him that there had been some improvement in her depressive disorder since it was diagnosed by Dr Seear. The fact that she had carried on a sexual relationship in secret and punishment was meted out as a result of the discovery of her homosexuality, in terms of her developing sexuality, had had lasting effects and was likely to predispose her to some extent to psychiatric disorder.
63. It was clear to Dr Bell that the appellant had derived considerable benefit from being able to identify herself with the context and network of gay women in a culture which did not condemn homosexuality and which allowed her to express herself more "comfortably in the world".

64. Dr Bell expressed the view that the appellant should be under the care of the local Community Mental Health Team and might derive some benefits and supportive counselling. Appropriate psychiatric help was not possible when she was under the threat of return. He expressed the view that if the appellant was permitted to remain in the United Kingdom it was likely her condition would gradually improve. Removal would be to a country where she had suffered very serious psychological trauma. The defence of disassociation was a fragile defence. Returning her to Albania to the context in which she suffered a major traumatic experience, would have the effect of overwhelming this fragile defendant with the result that her mind would be filled with emotions and memories which would overwhelm her, which again would be sufficient in itself to cause deterioration in her psychiatric state. Returning her to Albania would mean returning her to a culture in which there was not only no tolerance of homosexuality, but homosexuals, as he understood it, were targeted and she would be under serious threat. Having to live in such an environment would in itself be sufficient to cause deterioration.
65. Dr Bell said that although there had been suicidal ideation in the past it was not a major current feature in her mental state and should be monitored. He assessed the current suicide risk as low. In the event of return, however, the risk of self-harm/suicide lapse would move from low, as it was at present, to moderate or high. He did not believe that she would be able to gain voluntarily any help from psychiatric personnel in Albania and measures could be taken to prevent her from harming herself or making an attempt on her life, such as forcible restraint or forcible sedation but they should not be regarded as psychiatric treatment.
66. In his second report Dr Bell stated that return would precipitate a serious deterioration in the appellant's psychiatric state, which would start the moment she knew she was to be returned and would remain so during the period of waiting, during the deportation process and indefinitely thereafter. When she arrived in Albania she would be in this deteriorated state and as such would be very vulnerable. Given the serious condition she would be in, it was quite clear that she would not have the coping mechanisms for managing her new situation. Indeed the likely outcome was that her deteriorated state would lead to less capacity to cope, which would result in further deterioration as her circumstances worsened. She would not be in a position to properly fend for herself; present herself for employment etc. It was also likely that given her vulnerable state, she would be easy prey to those who would wish to exploit her. He stated that if she were compulsorily admitted to hospital in Albania in circumstances where, as described in the US State Department Report 2008, mentally ill persons without family support were hospitalised in psychiatric hospitals for lack of alternative means, this would have consequences for her psychiatric state that could only reasonably be described as catastrophic.
67. He had been asked to comment, in a hypothetical situation of return, upon any impact upon the appellant living in Albania if she returned to secrecy in relation to her sexuality. His opinion was that attempts to suppress her sexuality would have very serious psychological damaging effects. An attempt to suppress/hide her sexual identity would also act as a very potent factor contributing further to her deterioration.

The evidence of Dr Bell in examination in chief

68. In examination-in-chief Dr Bell said that the fact that the appellant might not be able to hide sexual orientation might increase her paranoia. He said that suppressing sexual identity meant living as someone whom you were not, which resulted in an anxiety increase, paranoia and disassociation.
69. Ms Asanovic asked Dr Bell what kind of care would be needed, given that on return the appellant's condition was likely to deteriorate. He said he would expect the appellant to precipitously fall into a state where her condition deteriorated from the moment that she received the news that she was to be deported. He suggested that any adverse determination should be served on her legal representatives, who could arrange for a psychiatric assessment to determine whether she should be admitted to hospital. She might require medication but that should not be regarded as treatment. He said other factors would come into play on arrival which would affect her situation.
70. Ms Asanovic asked Dr Bell what kind of care she should have in Albania. Dr Bell said the appellant ought to be under the care of expert and specialised psychiatric personnel with knowledge and an understanding of adolescent breakdown and the effect on personality development with reference to conflicts relating to sexual orientation, the consequences for personality development, vulnerability to psychiatric disorder and an understanding of the consequences to the individual of the familial and broader cultural context. He said he did not think that she would be able to obtain formal psychotherapy, but in the event she were able to, it would require being referred to highly experienced personnel in which medication would be part of the treatment.
71. Ms Asanovic asked Dr Bell whether the appellant should be hospitalised. Dr Bell said a judgment had to be made whether the cost of forcing hospital admission would be greater than continuing to treat as an outpatient. He said that was especially so if someone was paranoid. In some cases admission to hospital would have such grave consequences regarding the patient's ability to trust psychiatric personnel that it would be very much a last resort.
72. Ms Asanovic referred Dr Bell to his reference to suicidality in his report and asked whether the objectivity of the risk was to be borne in mind when qualitatively assessing the appellant's position. He said that his understanding was that the appellant believed herself to be at serious risk by virtue of her sexual orientation, which was causative of her state and vulnerability. He said if one posed the unlikely conclusion that she was at no risk of discrimination or attack this would not remove the problem, since one of the fundamental categories of psychiatric disorder was that the capacity to assess objective reality was impaired and therefore, given her psychiatric disorder, she would not be likely to be reassured by her showing her that her fears were ungrounded.
73. Ms Asanovic drew the attention of Dr Bell to the statement in his first report, in which he indicated that the appellant's adolescence would be considerably more traumatic living in a culture where homosexuality was treated with extreme hostility and low tolerance. She asked whether his opinion would be the same if it was merely discrimination. He said that for an adolescent the formation of sexual identity was a critical moment of development and finding one had a sexual orientation at odds with one's culture would be traumatic. Discrimination would be an external marker of

something of the culture. He said that he was aware of the study by Dr Michael King, which showed that psychiatric morbidity was consistently higher among gays and lesbians than non-homosexual people. He said he had reviewed the literature and studies tended to the conclusion that the important factor was continued discrimination even though homosexuality might not be illegal. Where there was discrimination in schools and workplaces homosexuals still suffered considerably.

74. Ms Asanovic asked how effective any treatment would be if it did not include issues of sexual identity. Dr Bell said that the first important thing would be that the person treating the appellant did not discriminate against homosexuals. He said it was not a question of practice but institutionalised discrimination. That might occur when any individual may not regard themselves as racists but reveal themselves as hostile and Dr Bell said that treatment required understanding of the appellant's condition. In the example of a catastrophic bereavement causing anxiety and a depressive state, he asked rhetorically whether there could be treatment by someone who did not understand the consequences of bereavement.

The evidence of Dr Bell in cross-examination

75. In cross-examination Dr Bell was asked whether it would follow from the fact that the appellant had shame about her sexual identity that she was not wholly comfortable with it. He said they were quantitative aspects and she was much more at home than she had been before. With gays who came out in our culture, there was still conflict. Ms Laing suggested to him that he seemed to be saying that the appellant was worried about giving the impression of homosexuality and yet in another part of his report he said she did not behave in a particularly gay way. Dr Bell said that if it were possible to think that the appellant could hide her sexual identity now that would be a wrong conclusion. Dr Bell felt that the appellant's fear that people would notice that she was homosexual was more than a person having to come to terms with homosexuality and being self-conscious. He agreed that the fact that the appellant was anxious about her immigration status might contribute to feelings of being followed in the street and it was not possible to disentangle that aspect of the case.
76. In answer to questions about his mention of forcible restraint, he said sometimes it was thought that sedation and restraint would treat the risk of self-harm. He said being sectioned, restrained and sedated was very much a last resort. He agreed that his opinion was the risk of suicide would rise from low to moderate or high if the appellant were returned to Albania. He said the deterioration of her state would require an evaluation of the risk of suicide. The crucial point was that for similar kinds of psychological disorder, where there is family support, the risk might be a low one. The risk of return involved a number of complex features, the appellant would be returned from a place in which she considers herself safe and could express her sexual identity. The breaking of that could be sufficient in itself to cause such a deterioration as well as external beliefs and external factors. Psychologically all persons were sensitive to the conditions in which they were.
77. Ms Laing asked Dr Bell about his reference to the risk of self-harm and suicidal acts. She asked whether he could separate out self-harm. He said he could not. There would be an elevated risk of suicide and of self-harm on return. Ms Laing pointed out that Dr Bell had said, at the time of his first report, that suicidal ideation was not a

major current feature and asked whether the appellant had expressed it to him. He said that she had told him herself. It was clear that there were no instances of self-harm in the past. Whether she had said anything to him was something he would have to refer to in his notes. He was not sure that had something been said he inevitably would have noted it in his report.

78. He was asked whether the reason for the fact that his recent report did not speak of the risk of suicide at all was that he had not been asked to comment on it. He said that was the reason. He agreed that it was true that he had no special expertise in the mental health services in Albania but said he had worked in third world countries where general psychiatric services were minimal and unsophisticated. He was asked whether he had picked up the fact that in Albania the appellant had been depressed and went to her GP and got medicine. He said he could not recall.

The evidence of Dr Bell when questioned by the Tribunal

79. We asked Dr Bell whether his conclusion would have been the same absent any suicidal ideation on the part of the appellant. He said his judgment was based on a number of factors. For example, some people clearly had suicidal ideation but in other cases there was other evidence to show suicidal ideation. He said what he had suggested was a sort of progressive state of a moderate to high risk of suicide. He was asked whether the appellant's paranoia would prevent her from seeking psychiatric help in Albania. He said in psychiatry one of the important factors was the nature of the relationship. The appellant's reluctance to discuss her homosexuality in Albania would make her reluctant to seek help.

The evidence of Dr Bell in re-examination

80. In re-examination it was pointed out that in his first report he had assessed the risk of suicide/self-harm as remaining high from the moment she heard that she was to be returned. Dr Bell said that he meant moderate to high.

The evidence of Ms Stephanie Schwandner-Sievers

Her first report

81. In her first report Ms Schwandner-Sievers indicated that according to the appellant's solicitor's letter of instruction she was asked to prepare a joint expert report with Dr Nicola Mai and to liaise with him to decide which issues to deal with in their respective reports. He and she had agreed that he would deal with the specific situation of homosexuals in contemporary Albania and they would both touch on employment and economic survival chances and independent life of a single and unskilled woman in Albania, as well as the general acceptance of single women in society and her possibilities for relocation. She would deal solely with the possible assistance that could be expected from the Albanian authorities including issues of welfare benefits, social housing or social service assistance, the question of whether prostitution would be the appellant's only choice and the likelihood of persecution by the family in terms of killing or other harm, because of their honour or whatever options the family might resort to in order to reverse the situation.

82. Ms Schwandner-Sievers stated that the report including references to case-relevant academic literature as well as to openly available 'grey' literature (policy reports and publications). It further made reference to in-depth research interviews, such as with [a person who did not wish his identity to be revealed] in October 2007 and with one of the Albanian professors of law, Ismet Elezi, in February 2005. All evidence presented, whether research (interview) or open-source evidence, was thoroughly cited according to the best academic standards.
83. Ms Schwandner-Sievers dealt with a large number of matters that related to the general background position in Albania. She said that Albania's self-presentation followed what she called "image politics" which entailed a significant gap between positive national self-representation (of progress, including in reforms on paper) on the one hand, and the often appallingly difficult situation of social realities on the ground, as well as a notorious lack of implementation of legal forms on paper. She gave two examples. The first related to the size of Albania's shadow economy in relation to its GDP. Officially the figure was given as 31.8% whereas Dr Martr Muco, a professor of economics and the internationally best-known and highly renowned expert on Albania's fiscal politics expressed the view that a figure of around 50% or more would be more accurate. The second example was from a progress report regarding victims of trafficking (VoTs). Jennifer Hollinger, Fellow of Churches against Sex Trafficking in Europe (CHASTE), discovered during her research on Albanian anti-trafficking battle, during four months of summer/autumn 2007, that the police deliberately kept the figures of VoTs down.
84. Ms Schwandner-Sievers' conclusion was that Albania's problems on the ground should not be understood by confusing law reforms on paper with social reality and practices as today experienced by common Albanians. She said that this understanding was widely shared in the international community.
85. Ms Schwandner-Sievers said that in Albania deeply rooted heterosexual and particularly patriarchal defined norms still underpin the attitude of both the authorities and society at large. She quoted sources which suggested that homosexuals were particularly vulnerable to abuse and discrimination against women and homosexuals persisted regardless of the law. She acknowledged there was cultural change but said the younger (mostly urban) generation challenges to patriarchal traditions had produced anxieties among the traditionally-minded generations and, particularly, amongst traditionally-minded men, who felt threatened to lose their particular powers, duties and rights of control over women accorded to them by patriarchal Albanian traditions. Much of these anxieties helped to explain why violence, particularly domestic violence, and less frequently, honour crimes, had become a problem in post-socialist Albania.
86. She referred to the US State Department's Human Rights Report 2008, which stated that corruption, resource scarcity and the judiciary, as well as police corruption, unprofessional behaviour and impunity, remained problems, although it also recorded improvements in the prosecution of corruption in these fields. The overall performance of law enforcement remained weak. Although the overall rate of murder in Albania had been declining the total number of females killed by firearms had increased and the local UN representative told a UN Albania conference in March

2007 that at least one third of all women in Albania were estimated to experience physical violence within the home.

87. Under the heading “Societal killings/*kanun* (limits and scope of explanation)” Ms Schwandner-Sievers said reference to an explanation in terms of classic *kanun* should be restricted to northern mountain communities of Albania and to migrants from these communities. These customs ceased to exist in southern Albanian customary law already in the 15th century. On the other hand massive internal migration flows after the fall of communism meant that there had been repeated Albanian press reports that documented the transport of rural cultural backwardness across the country into the cities and with them the most traditional attitudes towards young women.
88. Ms Schwandner-Sievers said that reference to an explanation of societal killing in terms of classic “kanun” should be restricted for northern mountain communities of Albania and to migrants from these communities. These customs ceased to exist in southern Albanian customary law already in the fifteenth century but on the other hand massive internal migration flows after the fall of communism meant that there had been repeated Albanian press reports that documented the transport of rural cultural backwardness across the country into the cities and within the most traditional attitudes towards young women. The State Department Report of 2006 stated that although under “kanun” only adult males were acceptable targets in blood feuds, women and children were often killed or injured in attacks.
89. In 2003 a new Family Code was enacted which annulled all previous legislation relating to family and marriage. It assisted in combating forced or arranged marriages. It included article 8 which conditioned the legality of a marriage upon the consent of the parties and contained specific provisions prohibiting domestic violence. Amnesty International in 2006 found that women felt denied justice in court. They felt exposed to socio-cultural pressures not to divulge internal family problems to the outside world. She quoted a passage from the Amnesty International Report entitled “Albania: Violence Against Women in the Family: ‘It is not Her Shame’”, dated 2006, to effect that women may also be considered as “violating family honour” by exercising the right of choice in marriage or by trying to leave an unwanted marriage.
90. Under the heading “Societal attitudes towards homosexuality” Ms Schwandner-Sievers expressed the opinion that in the present day homosexuality in Albania could not be lived or expressed openly because there was no societal tolerance at all. She could only theoretically imagine such a possibility as an exception among the very thin layer of avant-garde and cosmopolitan elites in the capital. She had met hundreds of Albanians over the years and she had never met any gay people in or from Albania who had openly admitted to their orientation. She said the appellant, given her educational and family background, would not be likely to have any access to the social group of avant-garde and cosmopolitan elites in the capital. She quoted the experience of an Albanian gay man reported by journalists in December 2007:

“We were sitting in a park when two police vans pulled over. The officers got out of the van and dragged us away. One of the drivers came over to me and kicked me repeatedly, his boot hitting my stomach. When I begged him to stop, he just shouted ‘shut up you faggot’, and continued kicking me.” S.L, recalling the incident.

91. Ms Schwandner-Sievers said that the societal norm in Albania, both patriarchal and heterosexual, was based on the idea of the family and family life. The integrity and prospering of a family was at the core of the Albanian concept of honour. Even among highly educated cosmopolitan elites she found that particularly male respondents still emphasised the concept of Albanian honour as based on the value assigned to the family, being married, having children, protecting one's wife, mother and sister and respecting the parents. To a much deeper, culturally-embedded degree than in our post-modernist society, men and women in Albania were expected to marry and have children and any diversion from this convention was, at best, not understood, ridiculed and pitied (by family outsiders), and, at worst, violently persecuted (by those who felt ashamed). It was significant to remember that within a traditional context there existed no notion of a woman's individual decision making and her transgression of the norm was not just her but the family's shame. By the same token a man and a woman's reproductive capacities were at the core of his or her assessment as being a 'proper man' and a 'proper woman'. For the majority of Albanian men of the socially underprivileged classes, control over woman was still commonly perceived as an indicator of family honour and their value as a man, and it was exactly the challenges to this role which seemed to explain the rise of domestic violence and the revitalisation of pre-communist traditional orientations, which justified even honour crimes against women in post-communist Albania.
92. Ms Schwandner-Sievers said that a lesbian orientation "misfitted" the traditional socio-cultural norms of family life, family reproduction and male dominance to such an extent that simply no space was provided in society, yet, which would allow free living such orientation. She was not surprised that the appellant's mother could neither comprehend nor accept her daughter's admission. It was also an indication of the typical traditional orientation that the appellant's mother took recourse to the traditional meta-physical explanation that the 'evil eye' was responsible for it. Her brother regarded her admission as an offence against the family, his honour and that of his family, which in turn provoked physical and psychological violence in the form of name calling, as well as disavowal and attempts at coercing her into marriage. The matter appeared as a typical reaction of a traditionally minded man who felt severely challenged in his duty to protect and control the women of the house and safeguard the family's honour.
93. Ms Schwandner-Sievers said that according to the latest EU Progress Report (2007) and other specialist reports the underdeveloped systems of social security and pensions in Albania were ameliorated only through the fact that the state comprehensively relied on family cohesion and support.
94. Under the heading "Income and employment chances" Ms Schwandner-Sievers said that the current average annual Albanian per capita GDP was US\$5,500 (2007 estimate) compared to the UK's per capita annual GDP of US\$35,300 (2007 estimate). The grey economy was said to account for up to 50% of the official GDP. The rate of employment officially stated at 13% might informally exceed 30% due to the preponderance of near subsistence farming. According to the most recent EU Progress Report there existed a particular problem of high youth and long-term unemployment and women and young people under 25 years of age were disproportionately affected by unemployment.

95. Under the heading “Finding work and housing without family support” Ms Schwandner-Sievers said that an unskilled woman without family networks of support, which would help her enter the labour market, would be highly disadvantaged in finding employment, housing and had a particular risk of exploitation. Because of housing shortages and prices many young people found themselves forced to live with their parents for a long time even after marriage. There existed no openly accessible employment possibilities for young, unskilled women in Albania, such as were taken for granted in the United Kingdom and a woman seeking employment without pre-existing family contacts would make herself conspicuous for being a “*kurva*” (whore) inviting abuse in any employment context. One would normally always expect to be introduced to an employer through a close relation, normally the family, close relatives or family friends and this would be true for any low skilled (factory, restaurant, etc) or any other employment. Culturally such a social intermediary served both as a point of first contact as well as a security guarantee for both employer and employee. It would normally be a family’s family friend’s bar or restaurant where a woman would find work as a waitress.
96. Under the heading “Adult orphans – family rejection and social consequences” Ms Schwandner-Sievers referred to adult orphans, namely those whose parents had abandoned them, who were not necessarily dead, as well as those who lost only their father. She said they were rejected by their families and were too old to be allowed to live any longer in an orphanage; these people lived in dire poverty. Regardless of legislation they were denied basic rights such as adequate housing and many ended up sleeping rough and faced utter isolation and destitution, although some had experienced NGO support, which, wherever available, was always only ever temporary.
97. Under the heading “Life outside the family (for a single woman)” Ms Schwandner-Sievers said that the Amnesty International Report on Albania entitled ““No Place to Call Home”: adult orphans and the right to housing”), dated 21st November 2007, emphasised the link between the denial of the right to adequate, secure and affordable housing and the vulnerability, particularly of young orphan women, to possible sexual exploitation and abuse. She said that it reported numerous such girls and young women who had simply gone missing in past years and presumed that at least some of these had fallen victim to traffickers. The young women saw no alternative but to leave the country for Italy and Greece given their situation in Albania facing the societal stigma of being an orphan after being abandoned by their families, living in appalling conditions and surviving on a quite inadequate monthly state assistance.
98. Ms Schwandner-Sievers said that early (1993) donor-driven and well-funded social housing policies resulted in the building of public housing in Albania which, however, was allocated according to political rather than economic consideration and needs. A 2000 study found that 90% of the beneficiaries held an above-average income. Moreover as a result of the privatisation of state property in 1993 there was no state housing for rental, probably the most realistic option for many of Albania’s most vulnerable.
99. Ms Schwandner-Sievers said that there were 114,000 families who benefited from social assistance at present in Albania. There were impressive rules regarding

standards and licensing criteria for social service providers and the law on social services was amended to remove the age limit for financial support, however, in terms of actual alleviation of poverty and survival chances state support was inadequate. In April 2007 a family on social assistance received between 1,500 leks (12 euros) and a maximum 7,000 leks (57 euros) per month; in practice, depending on local government budgets, families could receive less than these sums.

100. Under the heading “Relocation/internal flight options” Ms Schwandner-Sievers said that in the event of her brother wishing to pursue an honour killing of the appellant, she would not be likely to be able to hide from him in Albania. Notably Ms Schwandner-Sievers told us in her evidence that she concluded that the honour killing of the appellant would be most unlikely.
101. In concluding that section of her report, Ms Schwandner-Sievers said she believed that total family rejection and subsequently social and economic destitution was the most likely and a substantial risk, which the appellant would face on return. If the family did not reject her she would be very likely to be coerced into marriage. There was no chance to publicly admit her sexual identity in Albania and she would always be forced to keep this a secret. The possibility of honour killing through her brother (possibly with the help of a hired killer) could not be excluded, but it was not as likely for someone from a Tirana family or the south of the country as it would be for someone originating from the north. By analogy with repeated interviews in the United Kingdom with Albanian women asylum seekers who were forced into prostitution and thus became a shame to their families, the brother would try to encourage the appellant to commit suicide if she would not obey. She believed the most likely risk was that if the appellant were to be accepted back into the family she would face coercion into a forced marriage. Otherwise she would be disowned and ejected from her family home. If the appellant continued to challenge her brother’s and mother’s perception of honour and reputation, such as by refusing to marry, they would be most likely not to want to have anything to do with her anymore, thus leaving her to social, cultural and economic destitution.

Ms Schwandner-Sievers’ second report

102. In her second report dated 21st September 2008 Ms Schwandner-Sievers said that the democratisation process in Albania continued to be highly problematic. According to the last Economists’ Intelligence Unit Index of Democracy for 2007, which measured democracy in terms of electoral process and pluralism, functioning of government, political participation, democratic and political culture and civil liberties, it was defined as a hybrid regime including elements of both flawed democracies and authoritarian regimes. It ranked 83rd out of 167 assessed countries, which was lower than Malaysia and Bolivia and higher than Singapore and Madagascar.
103. Figures on economic growth were notoriously unreliable in Albania. According to the latest EU Progress Report (November 2007) regardless of the existence of the national anti-corruption strategy and anti-corruption laws and reforms, corruption was widespread and continued to be a serious problem in Albania. In 2007 according to the most recent Transparency International Global Corruption Barometer 2007 Albania lost its first place of 2006 as the most corrupt country in the world, 66% of

respondents having paid bribes during the year in order to obtain public services to Cameroon (79%) and Cambodia (72%), with 71% Albanian respondents found to have paid bribes to obtain public services. The figure for Albania even though overtaken in the world ranking, presented in fact an increase in incidence of bribery by 5% since the 2006 ranking.

104. Ms Schwandner-Sievers said it was noteworthy that even though according to the US State Department Report on Human Rights Practices 2008 (relying on the Albanian human rights group AHRG), homosexuals (equally as members of the Roma and Balkan/Egyptian communities) were particularly vulnerable to police abuse and subject to discrimination regardless of the law, the Ombudsman made no mention of their plight.
105. Ms Schwandner-Sievers said that in her opinion, which was shared by other experts on the subject, lesbianism was a comprehensive cultural taboo which explained the specific reason why lesbians could not come out and were not known of or talked about in wider Albanian society. She quoted an article by Antonio Young entitled "Women who Become Men", published in 2000, which said that the idea of lesbianism was not just 'completely taboo' but when put to respondents they were 'utterly uncomprehending' and it was 'viewed partly with abhorrence and partly with a disbelief that any pleasure could be associated with such activities'. She expressed the view that partly both male and female forms of homosexuality were seen to stand in contradiction to the cultural norms associating sex with procreation only that should occur only in wedlock and that these cultural perceptions and taboos, particularly in traditional and marginalised contexts, were not likely to change as quickly as legal reforms as the result of international pressures and facilitation.
106. She had never heard any young Albanian refer to lesbian love or relationship and she could only imagine such discourse or even an open display of such a relationship in the closed and socially protected spaces of the cosmopolitan, avant-garde and arty circles of the capital. At the same time Albanian society had experience a pornographisation of the public space (TV, journals, open prostitution in the cities) in recent years.
107. Ms Schwandner-Sievers went on to say that it appeared important to know that unemployment affected women and young people to a disproportionately high degree and that discrimination against women prevailed in the employment sector with particularly low chances of inclusion in the employment market for those of little education. The level of employment benefit and social assistance was so low that it was not a disincentive to work and unemployment was a cause of poverty. The inadequacy of benefits was a stimulus for unemployed persons to seek additional income in the informal sector and avoid turning to the public employment services.
108. Ms Schwandner-Sievers commented on the assertion that there were state-run employment programmes, one of which was targeted specifically at unemployed women, in paragraph 29 in the skeleton argument submitted on behalf of the respondent. She said that the paragraph quoted from the 2004 International Labour Organisations "Employment Policy Review, Albania" which discussed state-run employment promotion practices (EPPs). She said that firstly the quotation omitted two relevant critical sentences which immediately followed the quoted part, which

read: “However, there is a lack of monitoring, evaluation and follow-up of these programmes. This is an important shortcoming since it impairs their assessment and future improvement”. The lack of transparency and unaccountability of these programmes stated in these crucial sentences must also be related to the all-pertaining problem of corruption in Albania. There was little insight into the success of these policies and their implementation, except that some of the earlier programmes were no longer operating due to lack of funds, while some of them appeared to be pilot programmes only.

109. Regarding the EPP programmes for specifically marginalised women, the categories eligible for specific support included Roma, ex-trafficked women, older women and women with disabilities. Equally the new national strategy on gender equality and domestic violence, when describing the current problems the country faced and proposing a strategy to change these, employed a similar category of women in need, women who were household heads, raped women, trafficked women, Roma women, Egyptian women, disabled women and mothers of many children. Homosexuality in the situation of single women without family support was not mentioned, although the social background to specific risks in her opinion applied in similar ways to such women equally as for example the victims of trafficking or Roma women. The ILO also mentioned as characteristic problems those in underpaid employment usually in the private or informal sector, lack of job security and lack of social or health insurance and it was her understanding that these problems and risks could be transferred to a woman in a situation such as that of the appellant.
110. The trafficking topic referred to in her previous report seemed to be an important example for this case as a specific social vulnerability of such victims – typically including mental health issues, social shame, family rejection and subsequent need for single young women to fend for themselves and on their own in Albania compared to the situation in which the appellant was, in her opinion, likely to find herself and thus might be valuable in any risk assessment.
111. Ms Schwandner-Sievers expressed the view that her understanding of image manipulation had now been verified since in the most recent US Trafficking Persons Report Albania was demoted from rank tier 2 to tier 2 WL (Watch List) recognising that previous governmental promises and action plans had not translated into sustained action, admitting to failure to protect in this case victims of trafficking. Ms Schwandner-Sievers suggested that Albanian new patrimonialism and politically motivated “rotations” (i.e. sackings) provided a systematic explanation how it could be that the Albanian police had received years of international training yet unprofessional behaviour, ill-treatment, corruption and impunity in the police remained a problem.
112. She noted that none of the Albanian counselling centres and women’s organisations, listed in paragraph 27 of the skeleton argument on behalf of the Secretary of State, offered any targeted support for specifically lesbian concerns and needs but domestic violence was the core issue of concern. No doubt some excellent work and support had been provided by NGOs in this field, mainly in the field of awareness raising and prevention regarding domestic violence and practical support for predominantly victims of trafficking (on problems of fostering family reintegration). In fact critics had noticed that the government over-relied on NGO work in this field and that there were

no special units (or responsible persons) in law enforcement agencies dealing with cases of violence against women.

113. There were also further important issues that needed to be kept in mind when assessing the support offered through NGOs. First sheltered support was only ever offered on a temporary basis in order not to “imprison” the victims rather than the perpetrators of violence and crime. Lesbians were not mentioned in any of the documents or NGO programmes, consistent with wider societal denial of their existence. Regarding employment programmes provided by anti-trafficking shelters Jennifer Hollinger of CHASTE observed in 2007 that there were success stories but these appeared to be more the result of personal effort and coping mechanisms than from rehabilitation programmes as such. Women at these centres did receive occasional training, which usually involved hairdressing, sewing and perhaps small business loans. The same was true for other women’s NGO initiatives such as Useful for Women, which in text or pictures suggested women-specific training or employment possibilities in the field of social care and household duties. Critical observers had, however, suggested that an initiative fostering traditional female skills only could not offer remedies for the fundamental economic or security problems which victimised and disadvantaged women faced in Albania.
114. Ms Schwandner-Sievers said it was important to understand that Tirana had more than tripled in size since the end of communism because of the huge influx of internal migrants from the rural and mostly conservative areas since the regime change in the early 1990s. It was these people who had contributed to both the traditionalism and criminalisation of the population in the socially excluded settings of the capital. There existed an abundance of studies which suggested that even Balkan cities like Belgrade, which had always been much more cosmopolitan and open than Albania’s capital Tirana, housed semi-rural spaces during communism and experienced ruralisation, re-ruralisation and cosmopolitanisation processes simultaneously in subsequent periods of state disintegration and state building.
115. Ms Schwandner-Sievers said that today there existed a comparatively thin layer of urbanite cosmopolitan, often old, elites in the capital and in terms of size and education a still underdeveloped middle class and these groups had quasi-monopolised the transnationally available access to education for their children and they provided the leaders and staff for most internationally funded NGO initiatives. In conjunction with the nouveau riche, i.e. successful, transnational businessmen of both the formal and informal (including criminal) trades, these elites controlled and shared among themselves access to power positions (including jobs supplied through the presence of various international agencies) and access to the newly available wealth and transnational connections. On the other side of the coin there existed a large, socially and economically disadvantaged part of the population both in the cities and in the countryside who, marginalised from such access chances and general opportunities, had found dignity, pride, respect and perhaps other forms of satisfaction in the context of their socio-economic exclusion in taking recourse to indigenous traditions (sometimes crime) which included control over women and the right to violence in order to assert conformity with these traditions.
116. In her opinion in order to establish whether culturally informed honour codes were likely to guide the response of the appellant’s family (father and brother) it was

important to establish the degree of traditionality of the family. Important indicators would be educational background, work and income, social relations, neighbourhood and peer groups, evidence of traditional practices and values (i.e. taking arranged marriage for granted; references to propriety of conduct in terms of honour and shame). It was thought further important to understand that traditionalism could displace and integrate modern influences.

The evidence of Ms Schwandner-Sievers in examination in chief

117. In examination-in-chief Ms Asanovic asked Ms Schwandner-Sievers how she viewed the suggestion by the appellant and the finding by the immigration judge that she would be disowned by her brother. She said that the violence used by the appellant's brother and the assertion that she was socially dead would be high psychological pressures in terms of marriage in the case of a conditional disowning, on the basis that if she wanted to be part of the family she would have to marry, otherwise she did not exist for them.
118. She was asked to elaborate on her suggested potential for an honour killing. She said that she suggested the possibility was very low. She said it was quite likely the appellant's brother would ask her to commit suicide herself. She thought that he would put her under pressure in various ways. On the other hand it was more likely she would be forced into marriage. She was asked what was likely to happen if the appellant returned. She said it was a matter of psychological terror and physical violence. The family had a specific trajectory of violence and Albanian domestic violence was prevalent. One in three Albanian women experienced domestic violence.
119. Ms Asanovic asked Ms Schwandner-Sievers to comment on the publication entitled "Ministry of Labour, Social Affairs and Equal Opportunities in Directive Policies, Directory of Equal Opportunities" document contained in the respondent's bundle. She said that was a statement of ministerial programmes and policies which informed them about the existing laws and the national strategy. She said she would be interested to know to what extent these laws and strategies were being implemented on the ground. She said the document claimed that implementation had started and referred to a monitoring report. She said she would like to see the monitoring report. She said the reason for having a highly sceptical approach to ministerial or government sources was the image politics which she had mentioned in her report. She said the country was under tremendous pressure to conform with EU legislation. She said it had to the present day been lauded repeatedly for its excellent legal reforms and national strategies but at the same time their implementation had been a great problem and the social reality had not changed in any comparative way to the change in the law.

The evidence of Ms Schwandner-Sievers in cross-examination

120. In cross-examination Ms Schwandner-Sievers agreed that she had not interviewed the appellant or her brother and that she was not qualified in psychiatry or psychology. When it was put to her that she was not in a position to speculate upon whether the appellant would be under high psychological pressure to get married she said that her conclusion was not speculation but a deduction from the fact that most

of the violence experienced in Albanian families was psychological and that the fact that encouragement to commit suicide was not physical but psychological. She denied that it was speculative for her to suggest that there would be pressure on the appellant by her brother to commit suicide. She said she commented in terms of likelihood in consistency with the socio-cultural background but did not know the family.

121. In relation to her statement that the family had a special trajectory of violence, Ms Laing suggested to Ms Schwandner-Sievers that according to the appellant's statement her father beat her when she was growing up because of his alcoholism and the only other incident was when her brother beat her up on the occasion when he discovered her lesbian relationship and was upset. She asked whether that was the trajectory of violence upon which she relied. She said that it was a family where the mother did not complain about violence and accepted the violence when she was beaten. The brother rose against the father on some occasions. She said the violence referred to by Ms Laing was not the only violence which occurred. The mother surrendered to violence from her alcoholic husband.
122. Ms Schwandner-Sievers agreed that Ms Laing had been right about the violence that the appellant had suffered. She agreed that the appellant's description of her father as a non-person was because of alcoholism. She said she spoke in terms of the family trajectory. She said she was interested in the family. The brother had taken over the patriarchal function. She said that was consistent with what happened in similar cases.
123. Ms Laing drew the attention of Ms Schwandner-Sievers to the passage in her first report in which she said the younger (mostly urban) generation's challenges to patriarchal traditions had produced anxieties among the traditionally minded generations. That was a reference to Annex 1 of her report which exhibited a news item on honour crime in Albania which contained an account of the difficulties of immigrants to Tirana in adapting to their new freedoms.
124. Ms Laing asked Ms Schwandner-Sievers if she accepted that there was an assumption by the writer that what happened in urban centres and in the south was very different from what happened in the north. Ms Schwandner-Sievers said that the article talked about newcomers and one had to look at social stratification and marginalisation in the city which was discussed in her second report. Ms Schwandner-Sievers agreed that Professor Eglantina Gjermeni was a woman and commentator from Albania. This was a reference to her comment, referred to in the article, that refugees came from the north in search of a better life but they never expected such unbridled freedoms in the urban south of Albania. Ms Schwandner-Sievers said that she said later that sons were allowed to enjoy their new freedom but that was forbidden to daughters. In reply to a question from a member of the Tribunal Ms Schwandner-Sievers said that she was not sure that there was a difference for those who were already there.
125. Ms Laing drew the attention of Ms Schwandner-Sievers to a further passage in the article which quoted a young novelist, Agron Tufa, stating that today in Albania taboos were breaking down. She was asked whether she agreed that that demonstrated social change. She said one had to look at the social change and

speed according to different social classes and backgrounds. Ms Laing suggested that Agron Tuta was not writing about the urban elite. Ms Schwandner-Sievers said he was a member of the urban elite. She agreed, however, that he was not expressly dealing with the urban elite.

126. She agreed with a member of the Tribunal that the country was coming out of a time warp into the present century. She said that a patriarchal mentality was still pretty pervasive. Her attention was drawn to the part of the article entitled "The one who loves you, beats you" in which a psychologist, Elida Rrapti, spoke about the father leaving his village behind but not his world view. To survive he must allow his daughters to work but he wants to control the family through violence while the girl realises she can be independent. She agreed that Elida Rrapti was a woman. She was asked whether she knew about the book written by Elida Rrapti. She said that she did not. She said there were other books and she did not deny social change.
127. Ms Laing asked whether what was important was that it was possible for girls to find work and lead independent lives. Ms Schwandner-Sievers said that she had spoken about pornography. It was like Franco's Spain. When values were being renegotiated, they went over the top on the other side. She said there was this negotiation going on as to what the right values were. She said there were fathers who were more or less tolerant. She said the article did not suggest that these girls lived on their own. She said she had listed those who did, such as students, but normally you would have to have a family in the background.
128. In answer to a question from the Tribunal, she said she accepted that there was enlightenment but it was uneven in terms of social spread and was particularly among the cosmopolitan elite in Tirana for whom life and choice was not different from here.
129. She was asked whether the appellant was not from Tirana. She said that she was, but the population of Tirana had tripled since the end of the communist government. Ms Laing suggested there was no evidence that the appellant's family were part of a recent influx. She said she had not investigated. Ms Laing asked whether the appellant was not born in Tirana. Ms Schwandner-Sievers said that maybe she was and asked where her parents were born. She said it was necessary to look at their social background. She said social stratification was an element they needed to look at.
130. She agreed that there were women holding positions of power in the government and that the speaker of the Albanian parliament was a woman. This was a reference in one of the documents to which Ms Schwandner-Sievers referred which showed that the deputy minister of the interior was a woman.
131. Ms Schwandner-Sievers' attention was drawn to paragraph 1.1.2 of the Ministry of Labour, Social Affairs and Equal Opportunities National Strategy on Gender Equality and Domestic Violence 2007-2010, which said that women had started businesses mainly in economic activities such as trade, wholesale, shops and various services, dentistry, notaries, advocacy, hairdressing, agricultural businesses, industry, dairy production, textiles, book publishing, tailoring and handicrafts. According to statistics

published by INSTAT women made up 17% of private business leaders. The largest registered number of businesses run by women was concentrated in Tirana (31%).

132. Ms Laing suggested that that showed that the role of women in Albanian society was changing. Ms Schwandner-Sievers responded that it was important to look at social stratification and the communist legacy. She said there was a boost in education for women in communist time and there was an element of elite continuation. Women holding positions in government or leaders of communist women's organisations tended to be concerned in government, and in charge of NGOs. She said that they had this continuation on the one hand and on the other hand women of lower strata were excluded from the workforce.
133. In answer to a question from the Tribunal, she said she was not saying that they were all from the elite. She said that she thought that for many women society was changing to their advantage. She was asked whether more women were enrolled in universities in men. She agreed that that was the case.
134. Ms Laing referred Ms Schwandner-Sievers to paragraph 11 of her first report. She had given statistics for the GDP in Albania which said that the grey economic accounted for up to 50% of the official GDP. She agreed that there was a large inconsistency about the size of the grey economy. She agreed that the Albanian government had a tendency to understate the grey economy. She was asked whether it was right that the grey economy provided opportunities for employment which did not figure in official statistics. Ms Schwandner-Sievers said that they had to juxtaposition different sources. She said she did not know where they got their data from. Ms Laing referred Ms Schwandner-Sievers to paragraph 4 of her report in which she referred to figures put forward by Dr Marta Muco and asked whether there were not two separate sources for the figures. Initially Ms Schwandner-Sievers said that Dr Marta Muco was putting forward figures from the ministry. She then said that she was a professor in the United States, therefore her figure was accepted in US reports.
135. Ms Laing drew the attention of Ms Schwandner-Sievers to the Ministry of Labour, Social Affairs and Equal Opportunities General Directive of Policies document and suggested that the government was taking the issue of gender and the need for powerful institutional mechanisms seriously. She said that she was interested in the impact of these policies. Ms Laing asked her whether in relation to her mention of image politics she was suggesting that the Albanian government had the incentive to make things look better than they were because they wanted to join the EU. She suggested that not only there was an incentive to appear to be making things better but also to carry them out in fact. Ms Schwandner-Sievers said that that should happen.
136. She was asked whether it was right to say that the EU did not take it on trust but monitored what was happening. She agreed. She was referred to the Commission's Albania 2007 Progress Report and asked whether that did not examine the progress in the previous year. She said that it did and she had quoted from it a lot. Ms Laing suggested the fact that the EU monitored the situation meant that not only did Albania appear to comply with the EU requirements but also complied in fact. Ms Schwandner-Sievers said that she was looking at the real impact on the ground. She

could not judge the question of willingness or ability. She could only observe the rate of social change. She said the report gave an insight into significant problems. She said the EU not only monitored but also attempted to facilitate change.

137. Ms Laing drew the attention of Ms Schwandner-Sievers' to a list of women's organisations in Albania and suggested that they and others assisted women and provided them with opportunities. She said that that was correct. She said that the problem was that some commentators said that the government relied too much on NGOs who made temporary provision. She said government funding was lacking and there had been a drop in international funding. She said that lesbians as a category were not catered for by NGOs, as for example in Hungary another transitional country. She said other critiques said the government was trying to reinforce gender stereotypes. She referred to the statement by Jennifer Hollinger of CHASTE, in paragraph 22 of her second report, which suggested that the typical NGO training for victimised women was linked more to traits that were easy to learn and to an extent a continuation of the stereotypical roles of women in Albania.
138. Ms Laing asked whether the assertion that no programmes were directed at lesbian women was consistent with the approach of Albanian society that meant lesbians were not recognised as existing. She said she thought that there was a denial of this problem. She said NGOs were no different.
139. Ms Laing suggested that what was important was that there should be training for women for the work opportunities which existed. Ms Schwandner-Sievers said that was not for her to say. In relation to the list of women's organisations in Albania Ms Schwandner-Sievers conceded that most of them were based in Tirana. She had not been aware of the organisation called "Useful to Albanian Women" until the previous Friday. She accepted that it existed and had the project set out in the document to which she had been referred. She pointed out that Elbasan in which there were some projects was in the south, across the mountains from Tirana.
140. Ms Laing asked Ms Schwandner-Sievers a number of questions about Tirana. She agreed that it was a large city with 600,000 to 800,000 inhabitants in which there was industry and a large banking section. She agreed that there were many shops, hotels, cafés, restaurants and businesses.
141. Ms Laing asked whether or not there were a large number of organisations in which there were opportunities for unskilled work. Ms Schwandner-Sievers said that as an anthropologist she had to look at how you gained access to employment. She said Albanian society worked along family lines which was different from going along with a c.v. She said that a personal connection was required which served as protection for both sides. She said that these considerations might have an impact on a person's ability to obtain employment. Ms Laing suggested that if one was looking for work one did not go with a c.v. Ms Schwandner-Sievers said that she suggested that a person needed an introduction. Ms Laing asked her whether she was sceptical about whether the appellant would get somewhere to live. Ms Schwandner-Sievers said that she was not excluding the possibility but there were risks involved without the appellant having family support, with the employment situation being quite insecure and women without a family being seen as ambiguous.

142. Ms Laing referred Ms Schwandner-Sievers to Annex 3 of her first report which contained notes from an interview undertaken on 9th May 2008 with Nasser Almalak, in which he was asked whether a woman away from her family could live independently, that is to say with a home by herself and work independently in Tirana, to which he replied that it was not a problem. He said the woman could rent an apartment or work if it was not known that she was so (that is to say a homosexual) although if her employer was a man and he knew, he would abuse her for sure.
143. Ms Laing asked her whether Mr Almalak was not saying that provided that a woman's employer did not know she was a lesbian she could live and work in Tirana. Ms Schwandner-Sievers said that there was a difference of opinion. She said she thought there were risks involved in approaching an employer and asking for employment without family support or personal connections.

The evidence of Ms Schwandner-Sievers in re-examination

144. In re-examination Ms Schwandner-Sievers was asked if any research other than her own had been undertaken on which the conclusion that was a need for family support was based. She said that research was undertaken by Austrians with whom she cooperated a lot. She said there were a lot of articles published on the subject. She was asked how recent was the most recent article she had read. Initially she said it was early 2000 but she did not recall the exact date. She then said that the last article she had read was last year (2007). She was asked what the conclusion of the latest article was. She said it was an article on blood feuds and migration to the city. She was asked whether she was aware of the types of employment which existed in Albania. She said that they had discussed them.
145. Ms Asanovic asked Ms Schwandner-Sievers whether in the appellant's case there were factors other than social strata which predetermined the reaction of a family to social change. She said she did identify indicators of traditionality, such as the narrative of her mother referring to the evil eye and an arranged marriage. She said there were other indicators one would look at. There were peer pressures on the brother who had taken on the role of the father. That suggested traditionalism on the part of someone whose peers were northerners but she did not know. She was asked whether there was anything in the family history other than this. She said that domestic violence could or could not be. She said it would involve an examination of the social strata. One had to ask what were the employment conditions of the father and brother. Another factor was the conduct of the mother in keeping quiet about the violence.
146. She was asked what place domestic violence had had in regard to other indicators. She said that was a possibility but it also could be attributed to alcoholism. The brother appropriating the head of the household could also be but that could also be due to a pathological state. Ms Schwandner-Sievers was asked what her views were of the risk on return having regard to these indicators. She said she made broad comparisons with adult orphans, people coming from the northern villages and trafficked women. It was quite evident that the mentality associated with family rejection contributed to particular risks and vulnerability and it was quite evidence that mentality issues shone through NGO policies.

Ms Schwandner-Sievers' third report

147. In her latest report dated 22nd November 2008 Ms Schwandner-Sievers said that the opportunity given to her by the appellant's solicitors to comment upon the newspaper adverts containing Albanian job offers gave her the opportunity to reveal her modified opinion of the appellant's case, having recently returned from research in Albania on an anti-trafficking fact-finding mission.
148. She said that she had followed up the specific question regarding the chances of a young low-skilled woman finding employment without family support through newspaper advertisements and had interviewed Dr Rigels Halili of University College in London, an Albanian colleague and anthropologist. Her modified opinion was that although Albania had been undergoing an accelerated modernisation process in recent years including, for example, a jump from severely underdeveloped media and communication technology to global internet and mobile phone technology, familism still remained the core value of orientation in society; gender relations were only slowly changing, and the gap in development between the rich and the poor, those left behind and those participating in progress, had significantly widened. At the same time, quoting her colleague Halili, particularly in the capital of Tirana (and one should add, the nearby coastal city of Durres) the shift from almost exclusively oral, to written, or printed, forms of inter-social communication could increasingly be observed in most recent years, and this affected the contemporary means of recruitment for the job market. She said that as a consequence of the prevailing cultural familism, a young woman without a network of family or other social support still remained at considerable risk similar to that described in her previous report, and this included specific, possibly even heightened, safety risks in attempting to find work in responding to anonymous advertisements for low-skilled jobs, as this was possible now.
149. She said her recent research in Albania suggested that the risk of sexual abuse for a young woman without family support may now be heightened. All international sources and local NGO respondents agreed that the internal trafficking market had exorbitantly increased in the last year or two, even though precise figures were not known. Tirana continued to flourish as a centre of internal trafficking of Albanian girls and women. They were attracted to Tirana by different means of recruitment and were later exploited in selected settings such as hotels, motels, street corners etc. She noted an advertisement for a manageress for a sex shop in one of the advertisements provided and stated that there were now Albanian girls who themselves chose to enter the prostitution trade and many university students on campus were believed to be involved. False promises of employment were according to the NGO Different and Equal the second largest means of recruitment of young women under its care into the forced prostitution trade in 2007.
150. She suggested the risk was heightened because of the generally limited opportunities for the employment of girls and women, limited employment which did not pay for taxes and social security and such sub-legal conditions appeared more likely to be related to private, low-skilled jobs than legally demanded and prestigious adverts that formally tendered for high-skilled jobs in the public sector, for which the appellant did not seem to qualify professionally. She said that Vera Lesko of Vatra also mentioned typical low-salary jobs such as dress-making in factories as an available option for

low-skilled single women, with specific reference to victims of trafficking (VoTs) but also pointed to specific risk in potential traffickers frequenting these venues to identify potential victims.

151. Ms Schwandner-Sievers went on to express the view that Albanian employers who placed both the formal-tender type of advertisements as well as the others were still likely to favour those candidates responding to whom they had already or could identify some personal links through the network of social relations. She said that the reintegration shelter Vatra which aimed to place former VoTs in jobs in local government and targeted employment programmes found that the main beneficiaries of these programmes (and, presumably advertised jobs) were local government employees who employed their own relatives. She suggested that because of strong support and lobbying and reminding the local government repeatedly of the law, six former VoTs were eventually placed in 2007. She said that this NGO might be unlikely to extend support to the appellant who was not a VoT.
152. Ms Schwandner-Sievers said that Dr Rigels Halili thought that the written (printed) publication of job adverts was a very recent phenomenon although some low-skilled job adverts could now be found in the weekly “Gazetia” and another weekly called “Celesi”, which could be described as a small version of London’s “Loot”. When she asked whether a young, single woman could answer a job advert he replied that she could, but it depended on her qualification but there were still issues of ties and relationships particularly if they were private businesses.
153. When asked whether it would make any difference if she had no family support at all and whether there would be possibly any security issues he said it was the family that helped a lot. They called it the “database of connections” which was a concept that worked in everyday life and through which as a person one was in society. If she were alone she might face threats, especially if she was a girl. There could be sexual harassment, mobbing, getting used for trafficking. Without a family she would also face miserable poverty. Without a family she might not find a flat and might even starve. He said of course there were changes and it was changing rapidly. He said there were now young girls who found a flat or a job but in such cases you could still assume that they still had the tutorship of their families and relatives.
154. In the final paragraph of her report Ms Schwandner-Sievers said there were risks arising for a single young woman without family support from this further entrenched criminal economy which she would particularly highlight now if she were to write a new report in the appellant’s case after her recent visit to Albania and having learned about the existence of public low-skilled job adverts.

The evidence of Dr Nikola Mai

His first report

155. We have set out the details which Dr Mai related of his experience in Annex C.
156. Dr Mai said he had read the report by Ms Schwandner-Sievers and agreed with her conclusions as well as endorsing her reasoning.

157. The first part of his report dealt with the situation of homosexual men and women in contemporary Albania. He said that as was shown by a report published in July 2004 by the Albanian Human Rights Group, being homosexual in Albania was an acute dilemma both for the individual involved and for his or her family and society. Common reactions ranged from silence and marginalisation to disgust, open discrimination and often maltreatment and abuse. The present situation of Albanian gay people could only be described as extremely vulnerable and dangerous. Because of the dramatic level of unemployment and of the housing situation in the country, almost all Albanian gay people were forced to live with their families and were dependent on them in one way or another. Most did not reveal their sexual orientation to their families for fear of being rejected by them and disowned. As employers reacted very negatively towards homosexuals in view of public opinion not only were they forced to hide their homosexuality but most, being unemployed without any income or social assistance, were forced into illegal activities such as sex work in order to survive.
158. While there was one informal meeting place in Tirana very few homosexual men dared to go there for fear of being targeted and harassed by the police. None of the gay men he spoke to knew more than an average of about five to ten other gay persons in Albania. A 2006 survey of 86 homosexual people (of which only three women participated) undertaken in Albania concluded that the LGBT community in Albania constituted a highly marginalised and stigmatised minority group. Albanian society was patriarchal and extremely homophobic. Therefore LGBT people could only exist in secret. They did not feel accepted by society because of their sexual orientation and even their relations with their family and friends were problematic.
159. Dr Mai stated that before 1995, homosexuality was illegal and punishable by up to ten years' imprisonment but from 1995 consensual homosexual acts between adults became legal, although under Article 116 of the current Criminal Code the age of consent for same sex sexual acts was still set at 18, the maximum penalty for infringement being five years imprisonment. The age of consent for people of different sex was set at 14. Until the present times, the most common term to designate gay people in Albania was still '*pederast*' or '*bythqirë*'. The fact that *de jure* homosexuality was a legal condition in Albania had not meant the end of *de facto* harassment and abuse against gays and lesbians. Given the social, rather than legal, nature the persecution Albanian homosexuals were subject to and the level of the isolation they endured, the legislation did not translate into changes of attitude in the police or the general population.
160. Dr Mai dealt with the circumstances in which the first Albanian Gay Association (AGA) was founded in March 1994. At the time it had some ten members, none of whom were willing to allow their names to be used and it announced its formation to the ILGA through a fax from Germany. Nevertheless the news of the establishment of the gay organisation soon spread also in Albania and on the night of 14th October three members were picked up by the police in Tirana, beaten severely for hours by the police who demanded that they reveal the names of the president and other members of the group. Due to the fact that one person did in fact name names, the police were able to pick up other gay men at their homes. Among these was the president of the group. In interrogation sessions these people were warned that they belonged to an illegal organisation and accused of having "foreign contacts". One

man who admitted to homosexuality faced criminal charges under Albania's law against homosexuality. Others were released but subject to being re-summoned for further interrogation and investigation. A second incident was reported later by the president of AGA, who sought and received asylum in the United States. In 1995 he was kidnapped by armed men, blindfolded, held at gunpoint and threatened. His abductors struck him and warned him he would be killed unless he named both other members of the group and the group's supposed sources of foreign money. With the departure of the president of AGA there was confusion, disorientation and disagreement between members of the association. After the political crisis of 1997 the leading group of SGA decided to break away and form the ALGA association which retained the most active elements of the previous experience and was currently cooperating with local NGOs as well as with international donors and organisations mainly within AIDS prevention programmes.

161. Dr Mai stated that in 1998, a group of about 30 Albanian gay people was arrested, interrogated and detained for hours by the police in Elbasan, in relation to a case of child abuse. Many of them reported having suffered mistreatment and endured psychological violence. The person responsible for the crime was later found to be an elderly man, totally unrelated to the gay scene in the town. Similar cases of abuse and ruthless arrest, interrogation and detention of Albanian gay people by police forces in relation to cases of paedophilia or other sexually related crimes were extremely frequent.
162. However, very often crimes committed against gay people were not prosecuted according to the law and easily dismissed as accidents. For instance in April 2001 the drowning of Ilir Belliu, a 21 year old gay poet in the Tirana Lake, an informal gay meeting point, was immediately filed as suicide against evidence of physical struggle and violence. Gay people were subjected to other humiliating behaviour by police officers. For instance in September 2003 eleven people hanging around in a park in central Tirana were detained arbitrarily in undignified conditions until the following day without being given any reason.
163. The secretary of ALGA had repeatedly informed him that in the last three years many gay people from Tirana had been stopped by police officers as they were walking home at night. Whenever found in possession of condoms they were immediately suspected of being gay and were sometimes subjected to anal inspection in the police street unit car as a means of verifying their sexual orientation.
164. In August 2005 the director of Gay Albania, a gay rights association, was arrested, together with three others on prostitution charges. According to an investigation carried out by ARHG (Albanian Human Rights Group), while in detention the four were mistreated by the prisoners and insulted by prison forces. The facts were reported in the US Department of State 2006 Albania Country Report on human rights practice.
165. Dr Mai stated that in February 2006 AHRG issued a statement in support of the asylum application of Altin Aliu, an ALGA member who subsequently was offered asylum in Sweden, to the effect that AHRG had made public several cases of maltreatment of homosexuals by community and police forces. Homosexuals in Albania had been harassed several times by the police in various forms. The police

had been searching their houses without having search warrants only because of the mere fact that these persons were homosexual and during these searches the police would exercise psychological and physical pressure.

166. Dr Mai expressed the view that the level of discrimination, abuse and marginalisation of Albanian gay people was acknowledged by the Responses to Information Requests of the Immigration and Refugee Board of Canada of 8th September 2006 summarising information available from a number of organisations and statutory bodies including the EU, the Home Office, the US Department of State, ILGA and various international and Albanian human rights groups. The situation was partially acknowledged in the 2007 Operational Guidance Note issued by the UK Home Office. And these considerations were mirrored in the US Department of State 2007 Albania Country Report which stated:

“As in previous years, NGOs claim that police targeted the homosexual community for abuse. According to the Albanian Gay and Lesbian Association, the police arbitrarily arrested homosexuals and then physically and verbally abused them while they were in detention. The Albanian Human Rights Group reports that during the year police harassed members of the Albanian Gay and Lesbian Association and other known homosexuals, sometimes searching their homes without a warrant.”

167. Dr Mai said it was important to underline that the expression “*known homosexuals*” needed to be interpreted according to the everyday reality Albanian gay people lived in. It referred to people who were known to be gay because they were members of gay associations, to people who were seen hanging around the few existing informal gay meeting places (parks and cruising areas) and to people who could be identified according to arbitrary factors such as being “effeminate” (in the case of gay men) or “butch” (in the case of lesbian women), being unmarried, or living with a person of the same sex who was not a member of the family. He said that in Albania a lesbian woman did not need to lead an openly gay lifestyle to attract attention and raise suspicion.

168. In dealing with the specific condition of lesbian women, Dr Mai said that while there were recorded incidents against gay men there were no recorded incidents against lesbian women and as a result he was forced to speculate on the actual condition of lesbian women in Albania by elaborating on his knowledge of gender relations in Albania and of the condition of homosexual men.

169. In the context of general stigmatisation and marginalisation that all homosexuals were subject to, lesbian women were likely to endure an even higher level of invisibility because of enduring prevalence of conservative and patriarchal moral values. This could be seen as corroborated by the fact that there were no lesbian members in Albanian gay associations. From this perspective, the fact that there were no reported cases of violence expressed against lesbians, did not mean that lesbians were not subject to violence and discrimination from the police, their families or in social relations. It would mean that within the dramatic situation Albanian homosexuals had to endure, lesbian women might be subject to an even higher level of invisibility and marginality. This condition of heightened invisibility did not protect lesbians, but made them even more vulnerable to abuse and less likely to receive appropriate protection.

170. In a private email exchange with Ms Elsa Ballauri, director of AHRG, on 11th April 2008, she confirmed that the considerations made in the 2000 report about the conditions homosexuals were subject to in Albania applied to lesbian women too. Dr Mai believed that the appellant's perception that there were no places in Albania where she could live safely as an open homosexual was fully consistent with what was objectively known about gay Albanian women.

171. In dealing with the possibility of single women living independently in Albania, Dr Mai expressed the opinion that it was very difficult for a young woman to lead an independent life without the approval of her family, not only for economic reasons but mostly because of the endurance of patriarchal values and practises regimenting the social mobility of women in contemporary Albania. He quoted a UN agency IFAD (International Fund for Agricultural Development) statement as saying:

“With a transition to a market-based economy, many of the principles of equality enforced during communism have lost strength, employment is no longer guaranteed. In addition, more women than men lost their jobs during structural adjustment, and formerly state-owned assets were generally granted to men. As a consequence, women increasingly depend on their husbands and extended families for survival (....) Women have more limited access than men to assets that could help them earn a living, adding to their vulnerability. For example, women face discrimination in owning property and in starting a business. Even gaining access to credit could be difficult for women, not for legal reasons but because banks prefer lending to men.”

172. Dr Mai said that because of the realignment of Albanian society along more traditional values and practises in the post-communist period, the possibility for young women to live independently from their families and not be married, mainly students or work colleagues, was conditional on the approval of their family members, who acted as informal guarantors with their employers and landlords. However only a minority of families were available to grant their daughters this possibility, usually those from the social and cultural elites of the country, to which the appellant's family did not seem to belong. Although Tirana could be seen as the most liberal of Albanian cities, being the capital and the largest, different neighbourhoods and families harboured different understanding of gender politics and entitlement to individual affirmation.

173. In his opinion, the view of Ms Schwandner-Sievers in relation to the presence of systematic issues underlying the difficulty of Albanian government implementing the various initiatives taken as a result of pressure from the EU, was an accurate interpretation of the causes of the present situation as well as presenting difficulties in relation to the future development of the country. In consequence even to this day the state was still unable to guarantee its citizens sufficient and adequate protection in the capital as well as in the rest of the country. This happened because the interconnection between a personalistic and corrupt political order and local power brokers, controlling strategic resources and trafficable goods (mainly drugs, people and weapons), had had an almost complete monopoly on the legitimate use of force. He quoted from the Albania 2007 Progress Report of the European Commission as re-iterating these considerations in particular as they affected homosexuals, which stated that:

“However, allegations of ill-treatment of suspects by police during arrest or questioning are still frequent. There has been little progress on application of basic safeguards against ill-treatment during pre-trial detention, such as access to a lawyer and doctor and notification of detention to relatives. Prosecutions for ill-treatment do not always make reference to an appropriately serious offence. Legislation setting criteria for compensation to victims is not yet in place. Amendments to the law on the rights and treatment of inmates are delayed. The Code of Ethics for the prison system is not always followed. Training for business staff on the European Convention on Human Rights is needed. The Supervisory Commission for the Execution of Imprisonment Sentences, which is intended to advise the Minister of Justice on enforcement issues and protection of the rights of prisoners and detainees, is still not operational. Cases of arbitrary arrest in the street of homosexuals by the police still occur.”

174. Dr Mai stated that in the light of all the considerations he had mentioned and of his direct experience of the condition of homosexual people in Albania and of the advancement of the process of democratisation and strengthening of the Albanian state, he believed that the appellant was right in fearing that the police could not offer her sufficient protection in the whole of the Albanian territory. He did not believe the appellant would be able to enjoy her sexual identity, relocate from her family, get a job and live independently if she were to be returned to Albania.

His second report

175. The supplementary report of Dr Mai was based on recent research he undertook between 7th and 11th May 2008, in which he met and interviewed Mr Nasser Almalak, the secretary of AGA (the Albanian Gay Association) and he met Mr SF secretary of ALGA. Besides these more formal meetings he spoke to a few gay people and met two gay friends, to whom he referred as O and F, who updated him on the general situation of the gay and lesbian community and on their personal circumstances more specifically. It was of note that all his interlocutors, but for Nasser Almalak, refused to be identified in any other way except for their initials. He was able to have a telephone conversation with Jim Kreider, an American/Dutch colleague/facilitator and representative of GISH Albania, an LGBT human rights organisation. He was unable to meet Ms Elsa Ballauri, the director of AHRG, the Albanian Human Rights Group, during his visit because she was abroad but he was able to talk to her by telephone.

176. Dr Mai's overall understanding was that the conditions of homosexuals had not improved but actually had worsened since his last visit to Albania in 2006. His informers and friends reported a change in the attitude of the police, which led to more arbitrary inspections and searches in places associated with sexual activities which fell outside the norms of heterosexual family formation and lifestyles. One of his Albanian gay friends associated the worsening of the condition of Albanian homosexuals with the return to power of Sali Berisha. This informant said that whereas with the socialists you were stopped but usually released after some arbitrary questioning and abuse, now the police took you and kept you overnight so that the abuse was much greater.

177. In the capital Tirana, one of the main areas of informal meeting for homosexual people, the small park between the socialist party headquarters and the Ministry of Defence, was now occupied by the construction site of the country's new Christian Orthodox Cathedral, which meant that the few gay and lesbian individuals that took

the risk to go out and meet other people in informal settings (local “hanging-out” places), were forced to resort to a recently refurbished park behind the opera. Until recently this area was known as “*the hole*” as it was occupied by the very deep foundations of a huge (illegal) construction, which was surrounded by unauthorised kiosks. “*The hole*” for a long time had been the place of prostitution for extremely marginalised groups such as the Roma and drug-injecting (heroin) populations. Sex workers hanging out around “*the hole*” included (Roma) transgendered people, some of whom were drug users and sold sex to feed their heroin addiction, while others simply sold sex to maintain themselves. The closure of the park next to the Socialist Party headquarters led to the concentration in the same marginalised place of a wide range of stigmatised groups, including those whose sexual needs and desires did not comply with the descriptions of heterosexual family formation in Albania. “*The hole*” had been attracting regular police raids for a while and the accumulation and de facto concentration of stigmatised people in the same marginalised place had heightened risks of police abuse in the last few years.

178. Dr Mai suggested that although sexual relations between people of the same sex were no longer criminalised *per se* since 1994, they were still addressed in the penal code under the “Crimes against Morality and Dignity” together with prostitution and its exploitation and pornography which suggested a prevailing legal understanding that homosexuality was at odds with the dominant norms of society.
179. The review which was annexed to his report undertaken by GISH, about the way the current penal code addressed the issue of sexual relations of particular people of the same sex, underlined how only homosexual relations accomplished with violence, with minor persons or persons unable to protect themselves, were punished with up to five years’ imprisonment. The legal review undertaken by GISH underlined the existence of a differential treatment of violence in the context of homosexuality (defined in the code as anal intercourse between males) when compared to the way this was dealt with in the context of heterosexual relations, given that according to the Albanian legislation the age of consent for sexual relations between people of the same sex was the same as for sexual relations between men and women (14 years of age).
180. In dealing with *de facto* stigmatisation, Dr Mai referred to his interview with Nasser Almalak who said that if you were homosexual no-one gave you work as they did not accept you. Often when they found out about you they abused you and threw you out. The formal authorisation of homosexuality was a problem, as in the eyes of the world it seemed as if there is no discrimination while in fact no judge, no policeman, no-one was going to be willing to protect you. Almalak said he had been living in Albania for fourteen years and had applied repeatedly for Albanian citizenship, and although he was entitled to it, he had been told he was homosexual and he would not receive it. Nasser Almalak was the only interlocutor who was willing to talk in depth and at length about the treatment of homosexuals. His friend O, by contrast, lived a life plagued by secrecy and isolation. Apart from an inability to live openly he also found it extremely difficult to be in any relationship because he simply could not meet gay persons or someone he trusted sufficiently to disclose his identity to them and he would not take the risk of frequenting “the hole”.

181. Dr Mai pointed to the differences between the old and new penal codes. He stated that by the decriminalising homosexual acts between consenting adults, the new penal code represented a dramatic improvement on the previous penal code which was adopted in 1977 during the communist rule and which criminalised homosexuality *per se* but he pointed to continuity in the use of terminology and language in the contemporary Albanian legal code, such as “*pederast*” and “*bythqirë*”, which gave away persistent and culturally deep-rooted discriminatory moral attitudes towards homosexuals which mirrored wider attitudes in society.
182. The review undertaken by GISH underlined how homosexuality was understood and described in the current penal code as “sexual relations against nature” while active and passive homosexuals were described as “pederasts” in the Code. These considerations had direct implications for the lives of Albanian gay and lesbian people, since they placed them on a vulnerable position. They were relevant to the specific case of the appellant as Mr Nasser Almalak of AGO mentioned that “*the hole*” had always become a reference point for the few Albanian lesbians who ventured out at night in search for some form of socialisation with other gay people. He showed that at “*the hole*” one could find anything, prostitutes, transgendered people, lesbians and gay men. He said you could go there for a walk as you were dressed now and because of the fact that you were there they (the police) could decide to arrest you, take you in, insult you, beat you, leave you there all night, release you the next day or keep you some more time just as they wished because you were there.
183. Dr Mai went on to deal with the arrest and charging of Nasser Almalak in 2006 at “*the hole*” when he was distributing condoms as part of the regular outreach activities of the Albanian Gay Association. There was a group of five people comprising one gay man, three transvestites/transgendered people and a lesbian woman undertaking outreach work and/or meeting in a public place, who were all accused of conducting sexual relationships in public premises without any actual evidence of flagrancy which was prescribed by the law to justify arrest. According to Nasser Almalak the police were actively trying to curb the emergence of any form of LGBT movement by deliberately attacking the heads of the movement. For this reason he now avoided undertaking outreach activities at “*the hole*” in the first place. Nasser Almalak explained to Dr Mai that the main source of contention between the three main LGBT NGOs currently active in Albania in Tirana was the different attitudes they held towards the marginalised strata of the population and in particular towards the Roma with which ALGA always refused to work, whereas AGA regularly conducted outreach activities with all the different sexually deviant groups in “*the hole*”, including Roma people selling sex.
184. Dr Mai said that as a consequence of the interiorisation of different types of degrees of stigmatisation and of the necessity to compete for funding, the LGBT environment was very fragmented and hostile. Ms Ballauri said that there was no gay community and even the few people who tried to do something to improve the situation of gay people in the past had turned more into themselves. For example S the secretary of ALGA was now involved in projects about HIV/AIDS prevention and did not want to fight for gay rights directly.
185. In his conclusions regarding the appellant’s case, Dr Mai expressed the view that if the appellant were to be repatriated to Albania she would probably have to choose

between befriending the people hanging around “the hole”, thus putting herself at risk of abuse from the police and extreme marginalisation, or living a life of isolation, dissimulation and fear as she did not seem to have the class credentials to enter the very secretive world of the very few Albanian lesbians still living in Tirana. Mr Nasser Almalak had indicated that it would be very hard for the appellant to lead a gay lifestyle.

186. Dr Mai went on to express the view that Albania was a very closed and tightly knit society of less than 4 million people where the condition of anonymity could not be endured or guaranteed by anybody. On the one hand, it was very likely that even if a landlord did not ask too many questions about a tenant for reasons of economic opportunism, neighbours’ curiosity would eventually expose people who did not fit the conditions of heterosexual family formation. On the other hand, the high degree of corruptibility of the police exacerbated the condition and vulnerability of people who, for different reasons, must keep their identities secret for the sake of their survival. Should the appellant be forced to move back to Albania she would be very likely to be eventually traced by her family.
187. Dr Mai stated that the level of stigmatisation of Albanian gay and lesbian people was evident in the fact that no LGBT association had openly recognised premises and all its members, save for Mr Nasser Almalak, refused to be identified by name, in public documents and circumstances.
188. In dealing with the updated information on the specific condition of lesbians in Albania, Dr Mai indicated that all of his interlocutors agreed that they would be subjected to a level of abuse and discrimination similar or superior to that targeting gay men, if discovered, with the only advantage of being less identifiable and visible in the short-term. Nasser Almalak said from a sociological point of view it was true that gay men were more noticeable and were targeted by their families and society in general. Women tended to be more hidden and less visible so they were less struck by public opinion but when they were recognised they were still discriminated and abused while at work and in society. That was why they kept very much themselves to themselves and did not tend to go out for risk of being exposed. There were also lesbians enthusiastic about their identity who did not like to stay hidden all the time. They wanted to be open but they could not be as when they were recognised they were insulted and discriminated. He said it was difficult to see lesbian women in the park. They usually kept well hidden at home.
189. In dealing with risks arising from family, Dr Mai quoted Nasser Almalak who recounted the story of an activist lesbian friend who originally wanted to found a lesbian movement. Her brothers learnt about her as a result of which she left the family and the country in order to live a more fulfilling and safe life in Greece. Mr Nasser Almalak said that if the brothers of a lesbian women found out about it and did not accept it they could kill her, even in Tirana, if that was their mentality. All of Dr Mai’s other Albanian gay informers and friends, including the secretary of ALGA, agreed on the likelihood of the appellant being forced to marry if she were to be repatriated to Albania, given that her family already knew she was lesbian. In addition the isolation and fear shared by Albanian lesbians was compounded by the fact that even the secretary of ALGA was unable to convince the few lesbians he knew to meet him or talk about their lives. Ms Elsa Ballauri said she was not at all

surprised that he was unable to have a first-hand conversation with lesbian women in Tirana as it was very difficult even for her.

190. Dr Mai said that one thing that had changed since he had last been to Albania in September 2006 was a deepening of the income gap between the rich and the poor and the enduring unavailability of both work and housing. As a result it was much more possible for two women to share an apartment without any informal endorsement from the family provided it was not known that they were lesbians. However, the availability of a landlord/landlady renting his or her property to women who would not be seen to fit within the standards of heterosexual family formation would not stop neighbours from being curious and therefore enquiring about their family background, which would eventually be exposed. In this situation particularly stigmatised people such as gay men and lesbian women were more vulnerable to accepting and enduring abuse and discrimination in the workplace (when they were lucky to be offered a job) in order to maintain themselves.
191. In relation to an example of a gay returnee from the United Kingdom, Dr Mai said he had the opportunity of meeting a gay male friend who used to live in London who returned to Albania a year ago to be close to his family. He told him that he was forced to dissimilate his sexual identity completely for the sake of the reputation of his family in order not to lose their love and respect. He was himself unable to express his own identity and was considering returning to London. Another gay Albanian friend from Shkodra who returned home as he could no longer endure living in the United Kingdom as a failed asylum seeker on the basis of sexual orientation, felt completely isolated and deprived of his family and was also planning to return to the United Kingdom.
192. Dr Mai stated that the fact that he was unable to contact any lesbian while he was in Tirana (although he used all the reasonable contacts he had) was very telling of the situation of isolation and fear Albanian lesbian people found themselves in. Some of his gay and one of his heterosexual friends had known lesbians in the past, but they also knew that they had emigrated to the EU to escape discrimination and live their (sexual) identities.
193. In conclusion, Dr Mai expressed the view that the appellant would be at great risk of being isolated and vulnerable in Albania as she did not have the social, economic and cultural capital to access the elite lesbians mentioned by the unavailable GISH member nor did she have the support of her family which would greatly facilitate her access to independent work and housing. It was very unlikely she would not have a chance of not being traced by her family if she were to be repatriated in Albania due to the close-knit nature and relatively small size of Albanian society, the corruptibility of public officials and the degree of informal social control exerted by neighbours. If she were to be returned to Albania she would also have to fend for herself in a society which was increasingly polarised between the very rich and the very poor, where independent affordable housing and work were very scarce resources, where it was impossible to live openly as a lesbian and where cases of discrimination and abuse both by the police and society against the homosexual population, including lesbians, was on the increase both at work and in the very few marginalised spaces gay and lesbian people were cornered into.

The evidence of Dr Mai in examination in chief

194. In examination-in-chief Dr Mai said it was easier for men to find jobs in the grey economy as it was largely to do with construction and agriculture and involved manual labour. Women did not have the best conditions in those jobs. Image exploitation was more likely for everybody. He said many of these jobs were temporary so they may not be able to sustain people who were alone.
195. Ms Asanovic asked Dr Mai whether the suggestion that employers understated their employees in order to avoid taxes meant there were more opportunities for employment. Dr Mai said there were in any event limited job opportunities and he did not think that there would be a greater opportunity for the appellant since it usually assisted people who had the right connections through family or friends.
196. Dr Mai was asked whether he meant that it was impossible to obtain employment in Albania without this assistance of family or friends. Dr Mai said that that was not true so much for the skilled market, for example in banking a person needed a formal qualification, but it was at the lower end of the unskilled market where it was vital to have such connections. It would be awkward for a woman to go un-introduced to an employer. People would be surprised and unwelcoming and that there was such a pressure on jobs. People needed a personal liaison.
197. Dr Mai was asked how significant the family was in the context of the appellant's case. He said members of the family could phone and talk to an employer, ask neighbours about jobs and find opportunities. He said that the family sanctioned the morality of the person concerned. The importance of the family was not comparable to the family in any western country. He said the values of family substituted the sacred.
198. Dr Mai was asked about the ability of the appellant to find accommodation. He said the same applied. People would ask about her family. The expression they would use was "whose are you?" Explaining one's relationship to a family was a way of introducing oneself to a landlord. It would be a surprise to have an unmarried woman who was not a student not supported by her family. The vast majority of landlords would think twice or three times. Dr Mai was asked whether he thought that there was any difference if the accommodation the appellant was looking for was cheap. Dr Mai said it was less likely such people would be elite and detached from traditional values. If one offered \$1,000 then fewer questions would be asked.
199. Ms Asanovic asked Dr Mai whether he agreed with the Secretary of State that there was no evidence regarding the incidence of harm for the lesbian population. He said he could not, because of the occasion of the arrest of Nasser Almalak when a woman was present and she was involved in the whole issue and the development of the situation. He said people repeatedly said that lesbians were subjected to the same situation, the need to hide, discrimination and the adoption of a discreet demeanour meant being invisible.
200. Ms Asanovic asked Dr Mai whether he had met any lesbians in Albania. He said he met several but he was not on a fact-finding mission. He met people he understood to be clearly lesbians. It was in a social circle where it was not appropriate to discuss

it. He was able to tell that they were lesbians because of the way they were introduced, their demeanour and the way they reacted to the other members of the group. He mentioned that the woman who had been arrested with Almalak was present when he saw him. He said she was there but kept looking around. She was introduced as a member of the association. He said she did not speak English, which he was speaking with Almalak. He said that she nodded, agreeing with Almalak was saying. He said it was not appropriate to prompt her.

201. Ms Asanovic asked Dr Mai how he could draw these conclusions as there were no records of incidents involving the police. He said he did not think that in a situation where there was stigmatisation of women and widespread homophobia because there was no reporting, there was no problem. On the contrary one had to think about the issue of domestic violence which existed despite the lack of expected reporting. He said the rest of the context gave evidence of the strong likelihood that a situation might develop that way. He said women were respectable only if honourable according to a particular code. Any lack of conformity put a woman in danger where the police could not control the situation.
202. The Tribunal asked Dr Mai whether what he said applied to any woman in Albania. He said that when a woman was found out as a lesbian she would be regarded as an unworthy woman with a lack of respectability. The only terms in which he had heard lesbians spoken of was in the context of being up for grabs. A member of the Tribunal asked Dr Mai whether what he said applied to male homosexuals. He said that they were still men and still had a role. Dr Mai said that when he was working on a youth project in Durrës the local group was headed by a 55 year old woman teacher. The builder wanted him to sign the contract rather than the female. He thought homosexuality carried a higher degree of stigma. Admitting to being gay was one of the most difficult things to cope with due to the abuse that homosexual men were subjected to constantly which had been observed by international bodies. He said it was the tip of the iceberg. When his gay friends met him they would ask whether he was going to be alone or with a woman and if he was not with a woman they would provide one.
203. Dr Mai was referred to Annex 7 to his supplementary report which contained an AHRG Report for the American Embassy in which it was said that AHRG had not reported any human rights violations against gays and lesbians in 2007. He said that according to the US State Department Report there were cases of violations. AHRG one of the bodies which had information was linked to some groups. It was likely that AHRG did not know exactly what was going on.
204. Dr Mai was asked about pestering and harassment. He said that a friend was walking in the park. The police stopped him and found a condom. They suspected he was gay. They carried out an anal inspection in the van. They detained him arbitrarily. He was beaten up, insulted but not charged. He was released the following day. His arbitrary detention and beating was standard. He said it was in 2003. He was asked what type of place this took place in. He said it was in the inner centre of Tirana which was quiet after 11pm to 11:30pm. There was a park which was the place where men and friends could go looking for friends or sex. He said it was not safe so women were not likely to go there. It was where Fatbardha went with

Nasser. By “friends” he said he meant homosexual partners. Some conversation was carried on which could be seen as the beginnings of an embryo community.

205. Ms Asanovic asked Dr Mai whether it could be said that the police were involved because people were looking for sex. He said that that was not forbidden but they were always under surveillance. The police were not at a high level. They were not a trained force with a good standard of education. It was the nightshift and they were often drunk and picked on a gay to keep going through the night. Ms Asanovic said that the 2004 US State Department Report suggested that the police explained the arrests by reason of breaches of public order. He said the police could not say that they arrested people because they were gay. When asked they probably would say that they did so for breaches of public order. They could think that deviance was a threat to public order. The park had very low vegetation and the vegetation was well lit. If cars passed around it then he could not see how people could have sex in the park. Dr Mai said he knew that if he walked alone there he might be stopped by the police.
206. Ms Asanovic asked him if there was a visible presence of lesbians in these organisations. He said he met Fatbardha on his last visit and both secretaries of the NGOs said that there had been lesbian members but most had migrated. He said Jim Kreider, the spokesperson for GISH, had told him that GISH knew of a group of lesbian women who met but were closed and elite. Ms Asanovic mentioned that Mr DK referred to the fact that he knew three lesbians and Dr Mai said it was probably the same group of people. He said that Nasser referred to members going to the park and sometimes doing outreach in the park.
207. Ms Asanovic asked Dr Mai whether he could draw conclusions as an anthropologist. He said when he heard these accounts he found them coherent with how things were working at a higher level. He said that everyone acknowledged that the family was at the centre of society. He said the family was a key institution everywhere in the world. In Albania it was fundamental for advancement to have family support. State institutions were understaffed and under resourced.
208. Action Plus was an HIV and AIDS organisation. Because of their mandate they knew gay people. They gave out condoms and organised projects which gave them an excuse to be involved in gay affairs.
209. He was asked about the list of women’s organisations provided by the Secretary of State and asked what impact they had. He said that it was not a structural one. He did not want to be negative but they were micro-interventions, usually funded through foreign aid which determined the agenda. The length of their projects depended upon funding, which usually was in the short-term, for four or five years. He said it might be possible to place a woman in a textile workshop for the short-term, but that did not explain how long-term employment was possible. While he was there two cooperatives folded. He said it was about the funding and survival of the project. From what he had seen these projects did not have a structural effect
210. Dr Mai was asked about the EPP project referred to by the Secretary of State. He said he was not in a position to comment on this specific project but he did not believe the level of support had been adequate. There was a relationship between

this process and membership of the EU. The initiatives were prompted from elsewhere and were short-term. He was asked whether or not Albanians would be likely to sustain these projects for EU purposes. He said he did not think that the state would sustain them after funding had been removed. It was hoped that by manufacturing dialogue, Albania would enter the EU and the money then would be there.

211. Dr Mai was asked whether since 1998 he had noticed any change with respect to women. He said that he had. It was in the context of individualisation, which impacted differently on different social classes. Whereas for elite people it had put better chances with the family and personal liaisons attached to it. For the working class and people without means things had not changed. He said the widespread immigration of women had allowed women to witness different lifestyles abroad. In Albania that was a privilege of the few. It was a more polarised country in terms of money. Those who had, had more but those who did not have, had less.
212. He was asked whether the cultural predicament of women had changed. He said it had not. The majority were at a lower level of society. He was asked whether he thought that girls could be independent. He said because of the changes there was a widespread anticipation of the possibility but when they tried to change there was a conflict with their fathers and brothers. They felt under pressure. What he described as their “levers of power” were under threat and violence was often the result. He said that Agron Tufa, the novelist, spoke about the disappearance of the taboos around women. He was an intellectual who defended people like himself. He said some people wanted a different outlook but settled for less. After the collapse of communism and the fragmentation of society people were more questioning but now there was more settlement in the old ways. The gender norms and roles were most resilient.
213. Dr Mai was invited to comment on the reforms undertaken by the Albanian government. He said that they were very good news, but given the recent nature of these provisions his understanding was that it remained to be seen what opportunities the programme would provide. He said it was part of EU negotiations. It was a positive sign but there was no evidence that it would be delivered better than any other programmes had been.

The evidence of Dr Mai in cross-examination

214. In cross-examination, Ms Laing suggested to Dr Mai that he had not said that a landlord would not give a flat to a single woman without family support. Dr Mai explained that he was not saying was not that all landlords would be unavailable, but the possibilities were greater if the premises were let at a higher rental and in the medium term the neighbours would be alerted to people who did not reproduce. He said a level of gossip would feed back to the landlord. Ms Laing referred Dr Mai to the passage in his first report in which he mentioned the possibility that a landlord might not ask too many questions about a tenant for reasons of economic opportunism and suggested that at the lower end of the market people would take lodgers. He said there would be more scrutiny.

215. Ms Laing drew his attention to the notes of his meeting with Nasser Almalak in which Mr Almalak had expressed the view that it would not be a problem for a woman to rent an apartment or work if she was not known as a homosexual. Dr Mai said that when he asked the question he tried to find out whether the main problem would be financial or gender. He said the second thing was that if people did not know the woman was lesbian there would be less reason to abuse her. The question was how long that information could be withheld. He said a woman was expected to marry and her demeanour might arouse suspicions.
216. Ms Laing asked Dr Mai whether he was aware that the appellant used to help her mother as a seamstress. She suggested that what the appellant told Dr Bell suggested she had been dealing with clients outside the home. Dr Mai said he understood that this had happened before she had revealed that she was a homosexual and he said it was conditional upon her relationship with her mother. Ms Laing said that her point was that the appellant would have made contacts with clients. Dr Mai agreed that that was so, but said that they had been authorised by her mother. He questioned what the appellant would do if her mother was not available. Ms Laing suggested that she could go to those clients and it was unlikely that her mother would reveal her homosexuality. Dr Mai agreed with that proposition on the basis, as he put it, that dirty clothes would be washed at home.
217. Ms Laing asked Dr Mai whether newspapers in Albania advertised situations which were vacant. He said that they did but they were for the higher skilled and for internal candidates. He said there were some regulations that public jobs had to be advertised. There had been some improvement but it was unequally distributed. He said there had been economic growth but it was uneven. He was asked whether there were any newspapers in Albania, like the Evening Standard in London, which had pages of adverts for low skilled jobs. He said that there were not.
218. In answer to a question from the Tribunal about the “grey market” he said he had never heard of anyone going and asking for work directly.
219. In relation to the situation of homosexual men and women in contemporary Albania, he was asked whether the reality was that all of the references were to what happened to gay men. He said some were and some were not. Gay people meant both. He said there was a reference to cruising areas which related to men, since they tended to be the vast majority there. He was asked whether he was inferring that women went there because Fatardha went there. He said that was one item of evidence. Nasser Almalak told him that women went with him.
220. Ms Laing drew Dr Mai’s attention to the fact that he said in his report that there were no recorded incidents involving lesbian women and that thus he was forced to speculate. He said that there was one and he had referred to it, so there was one recorded incident. From conversations he had he gained the information that their position was similar.
221. Ms Laing referred Dr Mai to the report of the arrest of Nasser Almalak and asked him who put the report together. He said that Jim Kreider, the spokesperson for GISH, did so. Ms Laing suggested that the fact that Almalak and his friends were charged with violating Article 107, which prohibited sexual acts in public places and Article

113, which related to prostitution, rather suggested that the police might have been justified. He said he was not in the business of justifying the police. He said Nasser Almalak had been criticised for having relations with gypsies and people who sold sex. He said people in ALGA and GISH saw him as bad news. He brought to the fore the less respectable aspects which shamed them all.

222. Ms Laing suggested that there was a point of view in the gay community that what might have been going on was unlawful. He said he had said earlier how the police regarded lawful behaviour. They used the word “whore” and the situation was very fluid. Ms Laing suggested that the article did not contain comments from the police. Dr Mai suggested that it was a situation whereby groups internalised.

223. Ms Laing asked Dr Mai whether he agreed that the appellant’s evidence was that most people in Albania did not know that lesbianism existed. He disagreed because he thought that Albania was exposed to the media and all sorts of images and knowledge rose as a result. He thought that was illustrative of the appellant’s experience.

224. Ms Laing suggested to Dr Mai that he had not spoken to a single lesbian. He disagreed. He said that Fatbardha was present at the Almalak interview. He had spoken to lesbian women but was not in a position to expose issues. Ms Laing asked Dr Mai whether unlike the position with Mr Almalak he had no material which came from lesbians in Albania. Dr Mai said it was unfortunately so. Ms Laing asked how he could call the occasion when Fatbardha was present at the interview with Mr Almalak an interview with a lesbian. He said she kept nodding but deferred to Almalak. He said he asked all of his friends if he could talk to lesbians. He said most knew one who had emigrated.

225. Ms Laing suggested to Dr Mai that the impression given by his evidence, was that it would not be acceptable in the police hierarchy for a policeman to say he had arrested someone because he was gay. Dr Mai said that he thought there was a level of implicit approval at a higher level. He agreed that he did say that they could not say that they had arrested someone because they were gay, because they had to account to their supervisors.

The evidence of Dr Mai in re-examination

226. In re-examination Ms Asanovic asked Dr Mai whether the fact that the appellant had been in the United Kingdom for two and a half years would help if she were to go to clients that she had met through her mother’s work. He said he thought it was unlikely that the appellant would be able to seek work from her mother’s former clients since the job had been mediated by her mother. They would ask about her mother and the appellant would find herself in an awkward position because previously she was helping with a family business.

The evidence of Dr Mai in examination in chief when recalled

227. At the adjourned hearing on 26th November 2008, Ms Asanovic asked Dr Mai whether as a result of seeing the advertisements from the Albanian newspapers his opinion about the employability of the appellant had changed. He said he had become more aware of the fact that there were more opportunities to look for work

through formal channels, but he said they had to be balanced against family liaisons and personal connections which still played an important role in a decision to employ one person over another and the existing prejudices against homosexuals, which remained.

228. He said that over the last two months he had been checking the websites of the newspapers from which the advertisements had been extracted and others. He thought the newspaper advertisements were quite representative of what was on offer. The majority of the adverts referred to medium skilled jobs. The adverts that referred to low skilled jobs, suitable for the appellant, required previous experience and often indicated an age limit usually below 25 to 30. He said it was important to take into account that there were two types of advertisement. In newspapers like "Panorama", which was a daily newspaper, there were advertisements which were compulsory for public bodies and NGOs, who used public money and were required to advertise in specific ways. He said they were not in the usual advertisement sections of the newspaper but followed the public notices. The same applied to tenders, which in many cases, were by businesses and firms that were certified to European standards. These were usually very skilled jobs. He said Albanian law also provided that all jobs needed to be notified to the local job centre, where they could monitor the work market and assist the employed in accessing them. They had to be notified within seven days of the job coming into existence. He said it did not mean that they had to hire through the newspaper advertisement.
229. Dr Mai said that as a matter of fact, advertisements were present in most Albanian daily newspapers but were not used to advertise private jobs until 2000 and this reflected an element of the Albanian economy. There was a wider trend towards a written form of communication, which coincided with a higher circulation of Albanian newspapers. Different daily newspapers had different advertisements. Panorama had official ones. "Telegazeta" was a weekly edition of "Gazetia Shqiptare", which was a daily. It advertised all sorts of things like houses, cars and had been online since 2004. It had the same advertisements as the daily paper but there was a delay of a week. The "Shekulli" (Century) was another daily paper which started publishing adverts in 2007. The "Celesi" (Key) was another weekly for advertisements only, which started in 1997. It contained mainly advertisements to do with cars and property and then started to be used for job offers increasingly since 2000. He had reviewed the website the day before and found 360 advertisements, of which there were 75 offers of employment, the remainder being from people looking for work. The vast majority looking for work were men. He focused on jobs on offer rather than people looking for work. The knowledge that he obtained in conversation with the director of "Telegazeta" was that there were twice as many men looking at advertisements than women. He said that matched existing research from the Tirana Regional Council, which agreed that 70% were men and 30% were women. This was reflected in the high internal migration to Tirana since the end of communism in 1991. He said it involved a lot of educated women with titles (degrees) and skills. There was a pool of skilled labour that the market was not capitalising on. On the "Key" website there were two to three new jobs everyday of all categories and 200 hits per job.
230. Dr Mai also looked at the online version of "Celesi", where he restricted his search to waiters' jobs. He said there were nine entries, of which one was a person looking for

work and one was where they wanted a person below 25 and another where they wanted a person below 30 and in two cases they wanted prior experience. He said advertisements reflected the high unemployment rate in Albania. They reflected the particular gender factor. Most of the jobs which used the feminine form were usually very low skilled jobs. From his conversation with the director of "Telegazeta" he learned that there was a prejudice in favour of jobs more suitable for women such as shop assistant, waitress, bar woman or cleaner but not much more.

231. In answer to a question from the Tribunal he said that at the skilled level there were nursery jobs, opportunities to work in the textile industry and seamstresses. In relation to the textile industry he contacted a person working for the IOM, which promoted programmes for the reintegration of the victims of trafficking, which encompassed job placements and assistance with employment. He said she pointed out that the textile industry had suffered, particularly in the last two years. It was a strategic section for many women who had been repatriated. People with permanent positions were being laid off. In general they required people with previous experience working in a firm. They would invest in apprentices when there were bulk orders. There was not a lot of work at the moment.

The evidence of Dr Mai in cross-examination when recalled

232. In cross-examination, Ms Laing suggested that when in earlier cross-examination in September she asked whether there were newspapers like the Evening Standard in London with lots of adverts Dr Mai was categorical in saying the only jobs which were available were as a result of EU transparency requests. He agreed.

233. Ms Laing asked Dr Mai whether it was the case that he had been completely unaware of the jobs that he had now become aware of. He said it was something that he had overlooked, but wanted to add that he had been involved in several research projects regarding the labour market but no respondent said that they used advertisements. He agreed that he had previously answered "no" because it was the case that he did not know. He agreed that since becoming aware of the advertisements he had done a lot of research. Ms Laing suggested that when he was first asked to provide a report one of the issues to be addressed was whether a person in the appellant's position would be able to find a job. He said he concentrated on whether a lesbian would find it difficult.

234. Ms Laing drew his attention to paragraph 8 in his first report, in which he acknowledged that he and Ms Schwandner-Sievers would both comment on questions 5, 6 and 7, which concerned employment and economic survival chances and independent life of an independent and unskilled woman in Albania as well as a general acceptance of single women in a society and her possibilities for relocation. He said he concentrated on the appellant as a lesbian.

235. Ms Laing pointed to paragraph 9 of his first report, in which he pointed to the difficulties the appellant would have in accessing independent accommodation and work. Ms Laing reminded Dr Mai that his evidence was that the main way of obtaining employment was through family connections. Dr Mai said that he had replied that he had overlooked the advertisements. He said the fact that he was not aware of the job advertisements did not detract from the fact that Albania was a

homophobic society and there were strong prejudices against the employment of women. He said it was his understanding that Ms Schwandner-Sievers would have covered the issue of the advertisement of jobs and their reports would have complemented each other. He said he worked with the issue of Albanian homosexuals.

236. Ms Laing took Dr Mai through a number of job advertisements in the Telegazeta and suggested that there were a number of low skilled jobs advertised. She suggested that in many cases there was no age restriction that would exclude the appellant and not all required previous experience. He said he did not agree entirely. He had to say that there were prejudices at work so when one turned up if someone stood out in a physical way that would influence employability. He said it could happen that a woman who was a lesbian was going to stand out.
237. In reply to a question from the Tribunal Dr Mai said that it did happen that there were notes advertising jobs in shops and attached to doors. He said he had seen adverts such as those for waiters and for shop assistants. Those that he had seen did not say that no experience was required.
238. Dr Mai was asked by the Tribunal whether his report was to be read in a way that suggested that if a woman was single it would be impossible without family support to get a job or accommodation. He said he was not saying that it was not possible. He said he was saying it was possible for an independent woman to find work and accommodation but very very difficult and it was quite a recent development which was connected with the expansion of Tirana into a metropolis. He said an informal count showed that it had a million inhabitants. He said the fact that many people had migrated abroad and had come back and that there had been a developing urbanisation produced an appearance, in relative terms, of a mentality in favour of the possibility for single women to get jobs. He said the development of the economy and the widening of the gap between rich and poor had encouraged people to overcome their moral objections.
239. Ms Laing asked Dr Mai whether he was suggesting that if the appellant responded to an advertisement someone was going to look at her and deduce that she was gay. He said he thought she might not fit into a vision of an employable woman and therefore would be unfairly treated. He said that if she were to get the job it would be more difficult for her sexual identity not to emerge. He said it was not impossible that people would assume that she was a lesbian. He said it may be because of his experience he would think about it. There were different kinds of lesbians, butch and femme and she was more the butch type.

The evidence of Dr Mai in re-examination when recalled

240. In re-examination, Ms Asanovic asked Dr Mai whether there was any concerted effort to offer jobs to women. He said the government had programmes to promote employment in relation to specifically vulnerable groups. He said NGOs and cooperatives tried to cater for specific needs for women in accessing the labour market, for example Roma and VOTs. It was because women found it more difficult to access the labour market that the projects existed. The projects had to cope with the Albanian economy and produce results. In many cases women were trained and

work opportunities were found through the personal contacts of the director of the NGO; whether they were sustainable over time was a difficult question. He said sometimes it was a question of a bit of “box ticking”. He said the economy made enterprises difficult to sustain. When the economy wound down women were more vulnerable unless in a very high skilled position.

241. Dr Mai said that in relation to the appellant’s appearance, that it was a paradox in that Tirana, as people would be more tolerant towards homosexuality, they therefore would be able to identify and marginalise her. He said it would be less so in rural areas, where homosexuality did not feature in people’s imagination. The attitude in Tirana would be similar to the attitude here but less so in rural areas.

The statement of Mr DK

242. The statement of Mr DK was dated 20th September 2008. He said he was one of the founding members of the executive board of GISH Albania (Group for Social Integration in Albania, alias Grupi per Integrim Shoqeror), a human rights not for profit organisation based in Tirana in Albania. The organisation aimed to change the current situation as to the stigmatisation and fear within the LGBT community itself and the general view of the social minority in the Albanian public at large.

243. Mr DK had been involved with GISH since its foundation in October 2004. He had a law degree from the University of Tirana. After his graduation and until he moved to the United Kingdom in March 2008, he worked for the largest cement production company in Albania in an important position which we will not describe lest it might lead to his identification. He himself is a gay man and has lived most of his life in Albania. He had a good knowledge of the historical, social, cultural and economic background of his country and a good knowledge of LGBT issues in Albania as a result of his involvement with the work of GISH.

244. GISH was established in October 2004. The board members of GISH consisted of five people, as required by Albanian law. Some of the members left Albania for their own personal and professional reasons, and the membership changed. Altogether there had been eight members at various times, only he and one other having been there permanently from the beginning. Only one of these people permanently lived in Tirana. Others had left to live abroad or, having held a post temporarily, they left because of the workload of their permanent jobs. By November 2005 GISH had acquired offices and 2006 was a boom year insofar as activity was concerned. Nevertheless many things they started then were never quite completed. GISH did not provide legal assistance nor systematically monitor human rights violations as they did not have the capacity or funding. Since February 2008 GISH has been inactive.

245. In dealing with employment prospects in Albania, Mr DK said that there were high levels of unemployment and the official statistics were unreliable for a number of reasons. In addition the unemployment levels were difficult to calculate because there was a large grey informal economy that was estimated to reach 50% of official GDP. Many businesses declared a very low number of employees so they could pay lower taxes, which left many of their employees without social insurance, especially unskilled ones, and most of them worked with the fear of being fired at any time.

246. On the collapse of the regime in 1991, every citizen gained a constitutional right of freedom of movement. As a consequence there was massive migration within the country from the rural and provincial areas towards the biggest urban cities as well as abroad. It was estimated that at least 30% of the whole population changed residence within Albania and almost another 30% of the population emigrated abroad. This caused very high levels of urban chaos especially in the two main cities of Tirana and Durrës.
247. The Albanian government and the authorities completely lacked experience, expertise, financial resources and proper functioning institutions to cope with these massive and consistent and constant challenges. They were unable to provide their citizens with jobs, shelter and services. There was a high level of corruption that remained considerably high to this day. Most of the people who had newly migrated to the urban areas had low skills which made them unattractive in an uncompetitive job market.
248. Family and social ties were indispensable to individuals when they needed to find a job. If the appellant returned to Albania her employment chances, as a low skilled jobseeker without proper connections and ties, would be extremely limited, if any.
249. In relation to housing in Albania, Mr DK said that while most people who were housed lived in abodes which were usually owned by their elder family members, because of historic privatisation, this was not sufficient to cover the demand. The lack of affordable housing remained an acute problem. After the big financial collapse few people and businesses had the chance to buy immovable property and/or build houses and dwellings. Given the average monthly wages, the price of commodities and the level of rent for essential properties, it was very unlikely that a single person would be able to afford to rent a flat and live on his/her own. For the unskilled low paid employees this was simply impossible. The majority of the adult people still lived in the family home, even after marriage. If the appellant were lucky enough to find employment somewhere, with her salary as a low skilled worker, she could afford most of her basic living expenses except her accommodation costs.
250. In dealing with family attitudes Mr DK said that in 2006 GISH carried out research within the LGBT community. One of the conclusions of the survey was as follows:
- “...LGBT persons have a very difficult relationship with their families: these relations are insincere or aggressive. They have the same kind of relations with their relatives or social circles. The LGBT persons are afraid that admittance of their sexual orientation to their families may ruin their relations with the other members of the family. They believe that this may be followed by extreme measures by their family members, such as psychological and physical violence, a severe control on their lives; meanwhile most of them live within the family. There have been cases of LGBT persons forced by their family to get married without their consent or even cases of persons kicked out of the house and disinherited. So the relations of the LGBT persons with their families are relations filled with fear. Fear prevents these persons from having an open and sincere relationship with their families. The fear also causes inferiority complexes and a low degree of awareness and self-esteem that conditions their whole life, as well as the life of persons related to them.”

251. Mr DK said that the appellant could not live with her family and she would have to obey its rules and demands. Like every other low income traditional Albanian family members of the family may think that the appellant should be married and not be living in the parental home. One of their most natural preoccupations would be to find male suitors for her. According to both Albanian society and her family, the appellant's destined role was to play the dutiful wife to a future husband and be the mother of her future children. This would, in the eyes of her family and society, offer her certain economic security and social status that her family and Albanian society at large demanded and hoped.
252. He said that women were expected to be married between the ages of 20 and 25. After this age, women were considered less attractive for marriage and it became harder for the family to find suitors for their daughters.
253. In traditional Albanian society, having a single lesbian daughter who refused to find or build a shelter in a new family, would be seen as a big disgrace, 'unnatural' and 'unacceptable'. In such cases an individual would find that her immediate family and often other close family relatives might very likely feel 'obliged' to 'undertake measures' which would translate into constant physical abuse and psychological pressure to make her 'change her mind for her own good'.
254. Mr DK said that the alternative option was for the appellant to move and live on her own in some other province, away from Tirana and her family. If the appellant moved into a small provincial town she would find cheap accommodation, as rents were much lower in the provinces than in Tirana and Durrës, but she would have even less chances than in Tirana to find employment on her own. Normally anyone who was unemployed would be local and would get employment through either family or social connections or a combination of both. It was highly unlikely that a provincial business would employ a single unconnected woman from Tirana who for 'inexplicable' reasons moved to a small town. Many people would be suspicious of such a single woman, particularly as she would aim to live on her own.
255. If the appellant obtained social support she needed to bear in mind that in 2007 the poverty level in Albania was estimated to be three times above the level of social support at least. Nobody could survive with that amount of money. Family and social ties proved essential in the country where institutions and state welfare were so weak.
256. In dealing with attitudes towards lesbians, Mr DK said that lesbians were in a much more vulnerable situation than gay men. There were no bars or any other places whatsoever for LGBT in Albania to socialise and meet each other. Tirana had three meeting places for gay men – the little park next to the Parliament (a small park which he believed was still in use), the park behind the opera house (used to be "the hole") in the heart of the city and in the big park with the artificial lake. Apart from the area near the big park, which was basically trees and shrubs, the other areas were well lit, small parks, much smaller than Parliament Square in London. This was where people were mostly arrested on allegations of being engaged in public indecency or disturbing the "public peace". The safest way for LGBT people to find each other and to date was via the internet. Albania had the lowest possession of personal computers and internet access per capita in Europe.

257. Mr DK said that in a questionnaire they made with the LGBT community in Tirana, they only managed to get participation from three lesbian women in the overall total of 86 people. In a traditional patriarchal society where women were generally seen as being daughters, sisters, wives or mothers, lesbians had no public presence in Albania. It was not in their interest to be known as the risks were too great. Thus he did not know any lesbian or gay couples living together in Albania. If an Albanian lesbian couple did decide to live together and could afford to do so, in theory they could only do so in Tirana. They would have to keep their relationship secret and be extremely discreet. If they could be sure that their social status would permit them to live outside the family (which he guessed would apply to highly educated women with their businesses or employment with foreign employers or institutions) and they managed to keep their sexual identity an absolute secret, life for a lesbian might be just about possible. For anyone outside that elite, the choice was not possible.
258. Two and a half years ago a local human rights organisation, with the assistance of the Swedish Helsinki Committee, started anti-discrimination legislation and submitted it to the Albanian parliament, the draft of which was still pending for approval. The use of language in the penal code was very archaic and was a clear reflection of the patriarchal mentality of contemporary Albanian society. The archaic use of language was codified in law and translated into the stigmatisation and discrimination of the LGBT people as a social minority. The penal code made no mention of female same sex relations.
259. In relation to LGBT rights NGOs there used to be three organisations: GISH, Albanian Gay Association (AGA) and ALGA, all based in Tirana. AGA was run by Mr Almalak which was a very small organisation without premises. He believed that the membership (if any) were Roma and transvestites. He did not really know very much about AGA and never heard about anyone other than Mr Almalak. He was aware of two people involved in ALGA but not aware of their funding or the extent of their activities. Apart from AGA distributing condoms, he did not know what these people did. He was aware that ALHG was a human rights organisation with an interest in gay issues.
260. Mr DK said that none of the Albanian political parties had LGBT issues on their political programmes and agendas. The proposal from the Council of Europe to the Albanian parliament in 2003 for the legalisation of same sex partnerships was rejected by all the main political parties and their representatives, who participated in the debate, used openly homophobic language. Politicians portrayed homosexuality in the media as a threat to traditional family values.
261. The police had undertaken some raids against homosexuals in the meeting areas in Tirana. In April 2005 several gay men reported to GISH one particular police raid at a cruising area, when seven homosexual men were arbitrarily taken and driven from the park to the police station and held without charge for almost the whole night. They were kept in the police station cell without having the right to call family members or attorneys. After their names and additional data were filed, they were released without charge.
262. Since the beginning of 2006 the police raids in the cruising areas in Tirana seemed not to target groups of homosexuals. Now the police mainly targeted single gay

individuals, sometimes sending them to police stations. These cases were difficult to identify and often went unreported. The most notorious case was the arrest and imprisonment of four transvestites in August 2006 in the centre of Tirana. They were mistreated by the police, the custody/prison guards and discriminated against in the court's procedure and decision.

263. The weekly magazine MAPO gave a recent report in August 2008, denouncing the case of a transvestite who was clearly beaten in the centre of Tirana by a young gang with sticks. Two police officers watched from their police car without interfering. Many incidents which involved casual police abuse were not reported or recorded by anybody. While he was aware of many accounts involving gay men at the hands of the police, the accounts of societal abuse and discrimination, assaults or false accusations of paedophilia, although a real risk and a part of Albanian reality, were difficult to document.
264. Mr DK said that in the Faculty of Social Sciences in the subject of psychology, at the time GISH conducted research, there were paragraphs that still considered homosexuality as a "psychological disorder". There was very limited information on LGBT as a social minority and its characteristics. In the Faculty of Medicine and in the Faculty of Nursing there was a similar situation and same sex relations were seen as an abnormality. The Ministry of Employment and Equal Opportunities for several years had had an annual strategy of social inclusion, but up to now this strategy had not included the LGBT community. A major problem was the prejudice towards LGBT people in the health institutions in Albania. LGBT persons faced homophobic views by doctors during medical examinations.
265. Mr DK said he had been asked to include in the report something about his personal experiences of gay men in Albania. He understood that this was because he was not prepared to come to court. He said in his case he had never experienced problems. It was important that he was part of the privileged social class in Albania. He was "out" to people generally. He was "out" to his good friends and also his doctors and his mother. His father knew but his other relatives did not know.
266. He knew about twenty, maybe thirty, gay men in Albania who had good jobs and were highly educated. They had good incomes and had the resources to have a computer at home. They met people on the internet and travelled abroad a lot. From the privacy of their own homes and by virtue of having access to the internet, they could meet other like minded people. Like him they tended not to have problems.
267. It was right to describe them as an elite, as Ms Schwandner-Sievers had done. This did not necessarily mean that they had been born rich, but they all had very good jobs, normally as professionals and lived on their own, rather than with their parents. It was important to note that there were only two people that he knew of who were ever completely "out". They were Altin Aliu (mentioned in Dr Mai's second report) and perhaps Mr Almalak. They were very frequently arrested (obviously Altin was not now in Albania).

The report of Mr Adrian Bicaku

268. In his report dated 23rd November 2008 Mr Bicaku said that he was a psychiatric social worker, having been certified in 1993 in the Social Sciences Faculty of Tirana University and he was the director of the first and only comprehensive community care rehabilitation centre for mental health called “Alternativa”, which was a non profit organisation registered in 1997 as a local NGO. He divided his report into sections, the first of which described the mental health services in Albania. He said that psychiatric services were organised on a regional basis around the main hospitals in the urban centres of four districts out of twelve, namely Tirana, Elbasan, Vlora and Skodra. The public perception was that mental health illness led to hospital admission. That not only carried stigma but also psychiatric hospitals had been known to be under-resourced and kept patients in humiliating conditions.
269. In dealing with inpatient care in hospitals, Mr Bicaku said that the provision of inpatient psychiatric care was low, given that 50% of inpatients were long-term residents, the standard of care on the wards was extremely bad and the new generation of medicines were in short supply in Albania. The only treatment for inpatients was medical: there was no psycho-social or occupational therapy. In many cases there was a lack of medication. The only treatment in psychiatric wards was medical. There were no alternative treatments, like psycho-social or occupational therapy. Conditions within the wards were extremely bad.
270. In dealing with outpatient care in Tirana, Mr Bicaku said the achievement of the WHO was that they had facilitated the establishment of multi-disciplinary community teams of psychologists, social workers, psychiatric nurses and psychiatrists, in line with national strategy. The aim was to have such a team in every town, not only the four major urban centres. These teams had been established at the level of the four districts, comprising seven teams, with human resources concentrated in Tirana, where three teams were based. He said that additional centres had been established in Korca, Peshkopi and Berat. He had been told by a member of staff that counselling was being offered. The multidisciplinary teams did not offer a service outside working hours so as to be able to cover a suicide emergency, but Alternativa, which was the only NGO which provided rehabilitation care, education, training and occupational therapy for outpatients living in Tirana and their families, was able to respond on an around the clock basis. Community centres did have a degree of flexibility in frequency of contact and counselling, which in exceptional circumstances could be up to twice per week.
271. In dealing with the suicide phenomenon in Albania, Mr Bicaku said that the suicide rate was increasing more than had been foreseen and was now the leading cause of death. He later indicated that that expression was a result of mistranslation and he meant an increasing cause of death. He suggested that in six months only there were 300 people who committed suicide and there was twice that number of attempts. Psychologists and analysts attributed the phenomenon to economic problems, stigma and lack of strategies for preventing suicide by government and other alternatives. He said there was no crisis centre in Tirana which would help people who wished to commit suicide which was accessible at all hours. The only emergency service was the psychiatric hospital. It was envisaged originally that community centres would offer a stay in their inpatient facilities (they normally had a few beds) for two to three days but the pilot no longer existed.

272. In describing the availability of services on return to the appellant, Mr Bicaku said that the appellant was likely to require out-patient care should she not deteriorate, particular care being taken with counselling. If she were returned to Albania and her condition deteriorated so as to require anti-psychotic medication, what could be offered to her was typical old generation anti-psychotic (haloperidol). She would not be taking more advanced drugs because they were very expensive. She was not likely to be considered insured as she had never been employed or self-employed so as to pay contributions for national health and social security, as she would have lived in the United Kingdom for two years. In some two months time, after the new bill on social insurance had been passed, she would certainly not be eligible to receive any services free of charge. Even if she were not an inpatient she would have to become one for a period of 20 days minimum, in order for a psychiatrist to conduct a psychiatric assessment for her to be able to claim state benefits to which she would be entitled in spite of not having paid insurance, but by virtue of being mentally ill. There were basic benefits amounting to 60 euros per month as opposed to the state pension (similar to disability benefit) which was 200 euros. She would have professional-psychiatric support once or twice a week for counselling but that was not enough.
273. Mr Bicaku said that psychiatrists/psychologists in Albania had no experience and no special training for coming out issues. Whether the appellant would come across one of the more open minded psychiatrists who may have some knowledge of issues of homosexuality or someone sympathetic and professional, but untrained, or a person who saw it as an illness, was a question of luck. Being a homosexual was a “black taboo” for Albanian society. Homosexuality was viewed as a mental or hormonal disorder by the community. Professionals of the new generation considered it an individual preference, but the old generation over 50, considered it mental and hormonal disorder. This new view was reflected in the new revised version of the psychological textbook DSM IV used by the Faculty of Social Sciences, in use since 2004/2005, which viewed it as an issue of individual preference which had to do with personal identity. If the appellant were not in a dramatically poor mental state of health on arrival she would simply see her GP and may or may not be referred to a community centre. They in turn might simply treat her with medication and occasional supervision, perhaps even counselling, or if need be, refer her to a psychiatric hospital. If she was unable to work due to her condition she would in any event have to be assessed in a psychiatric hospital for twenty days to receive social benefits and he had already described the conditions in the psychiatric hospitals.

Our conclusions

The legal framework

274. We have approached the issues in this appeal from the perspective of the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and in particular have applied the definitions contained there, in deciding whether the appellant is a refugee under the 1951 Geneva Convention. We have also applied the amended immigration rules. These have permitted us to consider whether the appellant is in need of humanitarian protection as being at a real risk of serious harm, as defined in paragraph 339C of HC 395. Finally we have gone on to consider, inter alia, whether the appellant is at real risk of a breach of her human rights under the

provisions of the ECHR. The burden of proof is upon the appellant to show to the standard of reasonable degree of likelihood or substantial grounds for believing there is a real risk of serious harm on return to Albania for a Refugee Convention reason or alternatively so as to entitle her to humanitarian protection or protection under article 3 of ECHR. Our decision must and will be based on the totality of the evidence.

275. In approaching our task we will deal with the appeal under a number of headings but before doing that, we wish to consider the law which is applicable to the circumstances of this case so far as the appellant's claim to refugee status on the grounds of her sexual orientation is concerned.

276. In AN v Secretary of State for the Home Department [2000] Imm AR 76 Schiemann LJ said:

"As it seems to me there is now a broad international consensus that everyone has the right to respect for his private life. The person's private life includes his sexual life, which thus deserves respect. Of course no person has the right to engage in interpersonal sexual activity. His right in this field is primarily not to be interfered with by the state in relation to what he does in private at home, and to an effort by the state to protect him from interference by others. That is the core right. There are permissible grounds for state interference of some person's sexual life – e.g. those who most easily express their sexual desires in sexual activity with small children, or those who wish to engage in sexual activities in the unwilling presence of others. However, the position has not been reached that criminalisation of homosexual activity between consenting adults in private is not regarded by the international community at large as acceptable. If a person wishes to engage in sexual activity and lives in a state which enforces a criminal law prohibiting such activity, he may be able to bring himself within the definition of a refugee. That is one end of the continuum.

The other end of a continuum is the person who lives in a state in which such activity is not subjected to any degree of social disapprobation and is free to engage in it as he is to breathe.

In most states, however, the position is somewhere between these two extremes. Those who wish to engage in homosexual activity are subjected to various pressures to discourage them from so doing. Some pressures may come from the state, e.g. state subsidised advertising or teaching to discourage them from their lifestyle. Other pressures may come from other members of the community, without those members being subjected to effective sanctions by the state to disclose them. Some pressures are there all the time. Others are merely spasmodic. An occasional interference with the exercise of a human right is not necessarily a persecution. The problem which increasingly faces decision-makers is when to ascribe the words 'persecution' to those pressures on the continuum."

277. In paragraph 16 of his judgment in J v Secretary of State for the Home Department [2006] EWCA Civ 1238 in which the Court of Appeal remitted an appeal for reconsideration by the Tribunal, Maurice Kay LJ said that the Tribunal:

"... will have to address questions that were not considered on the last occasion, including the reason why the appellant opted for "discretion" before his departure from Iran and, by implication, would do so again on return. It will have to ask itself whether "discretion" is something that the appellant could reasonably be expected to tolerate,

not only in the context of random sexual activity but in relation to “matters following from, and relevant to, sexual identity”, in the wider sense recognised by the High Court of Australia (see the judgment of Gummow and Hayne JJ at para 83) [5395/0022003 HCA71]. This requires consideration of the fact that homosexuals living in a stable relationship will wish, as this appellant says, to live openly with each other and the “discretion” which they may feel constrained to exercise as a price to pay for the avoidance of condign punishment will require suppression in respect of many aspects of life that are “related to or informed by their sexuality” (Ibid, paragraph 81). This is not simply generalisation; it is dealt with in the appellant's evidence.”

278. In paragraph 20 of his judgment in the same case Buxton LJ said:

“The question that will be before the AIT on remission will be whether the applicant can reasonably be expected to tolerate whatever circumstances are likely to arise were he to return to Iran. The applicant may have to abandon part of his sexual identity, as referred to in the judgment of Gummow and Hayne JJ in S, in circumstances where failure to do that exposes him to the extreme danger that is set out in the country guidance case of RM and BB [(Iran) CG [2005] UKAIT 00117]. The Tribunal may wish to consider whether the combination of these two circumstances may have an affect on their decision as to whether the applicant can be expected to tolerate the situation he may find himself in when he returns to Iran.”

279. The reference to S was to the decision of the High Court of Australia in S395/02 [2003] HC A71, [2004] INLR 233.

280. The appeal was reconsidered by the Tribunal in HJ (homosexuality: reasonably tolerating living discreetly) Iran [2008] UKAIT 00044. In paragraph 39 of their determination they said this:

“We take as our starting point that when assessing whether a person who is a homosexual would face risk of persecution or serious harm on return to his own country we must take a factual, not a normative, approach. That is to say we must focus on the factual issue of how it is likely he *will* behave given the evidence we have about how and why he has behaved up to now. It is wrong for a decision-maker to apply a normative approach which focuses on how it is thought an applicant *should* behave. However, we take from the way in which the Court of Appeal has formulated its questions that in examining how such a person will behave we have to examine whether that will entail for him having to live a life which he cannot reasonably be expected to tolerate because to do so would entail suppression of many aspects of his sexual identity. We are confident that when referring to what an appellant can “reasonably be expected to tolerate” the Court of Appeal had in mind an objective, not a subjective test.”

281. The determination of the Tribunal in HJ was considered by the Court of Appeal in XY (Iran) v Secretary of State for the Home Department [2008] EWCA Civ 911. In paragraph 10 of the judgment; it was said:

“Whether the issue whether an appellant can reasonably be expected to tolerate his personal or family circumstances if he is returned to his country of nationality is more appropriately considered under the Asylum Convention or under Articles 3, and more particularly 8, of the European Convention on Human Rights is something that it is unnecessary to decide. So far as the Asylum Convention is concerned, however, I

would place emphasis on paragraph 11 of Maurice Kay's judgment and the requirement of persecution."

282. That was a reference to paragraph 11 of Maurice Kay LJ's judgment in J, in which he said:

"...If there is one thing upon which all the authorities are agreed, it is that persecution is, in the words of Lord Bingham of Cornhill in Sepet and Bulbul [2003] 1WLR 856 at paragraph 7, "a strong word" requiring a high threshold. It has been variously expressed but the language of McHugh and Kirby JJ to which I have referred – "it would constitute persecution only if by reason of its intensity or duration, the person persecuted cannot reasonably be expected to tolerate it" – has been adopted in a number of recent authorities including Z [Z v SSHD 2005 Imm AR 75] (at paragraph 12) and Amare v SSHD [2005] EWCA Civ 1600, paragraph 27, and RG (Colombia) v SSHD [2006] EWCA Civ 57, paragraph 16".

283. The Court of Appeal in XY (Iran) commented on the determination in HJ without expressing any disagreement with the Tribunal's approach. In paragraph 14 of the judgment it was said that it was for the appellant to establish that he could not reasonably be expected to tolerate his condition if he were to return to Iran.

284. It was submitted on behalf of the appellant, by reference to the acceptance by the House of Lords in Fornah [Secretary of State for the Home Department v K [2006] UKHL 46] of the proposition that all Convention grounds should be treated with equal parity and the statement by the Court of Appeal in Hysi v Secretary of State for the Home Department [2005] EWCA Civ 711, that an individual was entitled to "express, proclaim or take pride in his own ... racial origins", that, by analogy, a failure to prevent discrimination against a person which prevented him from expressing his sexuality would amount to persecution.

285. In fact, a careful reading of the judgement of Judge LJ, as he then was, who delivered the judgement, shows that the statement attributed to the Court of Appeal was not in fact made by the Court. What was said was more accurately set out in the appellant's response to the skeleton argument on behalf of the Secretary of State in which it was said that in Hysi the Court of Appeal accepted that:

"To compel an individual to disown his origins interfered with the fundamental rights. If the consequences of exercising the right to declare your race would lead others to subject you to severe ill-treatment, the consequences would be discrimination on the grounds of race, and persecution."

286. The importance of that passage in our view lies in the reference to "severe ill-treatment, the consequence of which...would be persecution". The appellant sought to distinguish XY (Iran) which was relied upon by the respondent, on the basis that the appellant was disbelieved about the basis of his alleged fear. Although there may be a factual distinction to be drawn, in our view there is no difference in the principle that has to be applied.

287. In her response, Ms Asanovic also relied upon what Baroness Hale said in Hoxha and Anor v Secretary of State for the Home Department [2005] UKHL 19 but she omitted the passage in paragraph 34 of her opinion in which she said:

"However, whether feared ill-treatment is sufficiently grave to amount to persecution has to be seen in the context of each individual case. Gender is an important component of that context. The San Remo Round Table concluded that there was no need to add sex or gender to the Convention grounds, because "the text, object and purpose of the Convention require a gender-inclusive and gender-sensitive interpretation". (See Feller, Turk and Nicholson, *op cit*, Chapter 5.2, "Summary Conclusions: gender-related persecution", p351)."

288. Baroness Hale was concerned to underline the fact that to amount to persecution the ill-treatment envisaged had to be not only grave but sufficiently grave.

289. Since receiving the final submissions of counsel, the Court of Appeal has dismissed the appeal against the decision of the Tribunal in HJ. In paragraph 31 of his judgement in HJ (Iran) v Secretary of State for the Home Department [2009] EWCA Civ 172, which was agreed by the other members of the court, Pill LJ said:

"In my judgment the test stated in paragraph 16 of the judgment of Maurice Kay LJ in *J*, by reference to S395/2002, [2003] HCA 71, complies with the standard required by the Refugee Convention. We are, in any event, bound by it. It is an appropriate and workable test. It was sufficiently stated by the Tribunal at paragraph 39, recited at paragraph 17 above. In reaching their conclusions, the Tribunal in *HJ* plainly understood the test. They considered the evidence with great care and in detail. They applied the test to the evidence and the facts as they found them to be. I cannot accept the submission that the findings at paragraph 42 were perverse. They were findings the Tribunal were entitled to make on the evidence. Their conclusion that *HJ* could reasonably be expected to tolerate conditions in Iran was firmly based on the evidence in the case, considered in the context of the in-country evidence. "

290. In paragraph 32 he went on to say:

"I would dismiss the appeal of *HJ* on that ground but add comment on the relevance in cases such as this of the views about homosexuality and its practice held and emerging from the in-country evidence in a particular state. The need to protect fundamental human rights transcends national boundaries but, in assessing whether there has been a breach of such rights, a degree of respect for social norms and religious beliefs in other states is in my view appropriate. Both in Muslim Iran and Roman Catholic Cameroon, strong views are genuinely held about homosexual practices. In considering what is reasonably tolerable in a particular society, the fact-finding Tribunal is in my view entitled to have regard to the beliefs held there. A judgment as to what is reasonably tolerable is made in the context of the particular society. Analysis of in-country evidence is necessary in deciding what an applicant can expect on return and cannot, in my view, be ignored when considering that issue. "

291. In paragraph 33 of his judgement he touched upon the point relied upon by Ms Asanovic. He had already referred to the judgement of the Court of Appeal in Hysi. He said:

"In *Amare v Secretary of State* [2005] EWCA Civ 1600 Laws LJ, with whom Mummery LJ and Wall LJ agreed, stated, at paragraph 31:

"The Convention is not there to safeguard or protect potentially affected persons from having to live in regimes where purists' 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. While, as I certainly accept, the sense to be accorded to persecution might shift and stretch as the International consensus develops, the Convention's guarantees remain limited by the two conditions I have described."

Laws LJ's second condition, which he had set out at paragraph 27, was that "the violation, or rather prospective or apprehended violation, must attain a substantial level of seriousness if it is to amount to persecution". That echoes Lord Bingham's finding that persecution is a "strong word" requiring a high threshold (*Sepet and Bulbul*) and requiring a degree of "intensity" (S395/2002, [2003] HCA 71). Citing other authorities, Buxton LJ, in *RG (Colombia) v Secretary of State* [2006] EWCA Civ 57, referred, at paragraph 16, to the high level of distress that must be reached before a denial of freedom can be said to be persecutory.

292. We take the view that these pre-9th October 2006 statements relating to the meaning of persecution are consistent with the definition of persecution set out in Article 9 of Council Directive 2004/83/EC, implemented by the Refugee or Person in Need of International Protection (Qualification) Regulations 2006. In these circumstances we take the view that there is nothing in the opinion of Baroness Hale which detracts from the approach that we must take in the light of the authorities quoted above and that the approach of the Tribunal in HJ is the correct one.

Change in Albania

293. We have heard a considerable amount of expert evidence in this appeal. We are particularly grateful to Ms Schwandner-Sievers and Dr Mai for their written reports and also their oral evidence.

294. In her second report Ms Schwandner-Sievers drew attention to the Economists Intelligence Unit Index of Democracy for 2007 which measures democracy in terms of electoral process and pluralism, functioning of government, political participation, democratic and political culture and civil liberties, Albania was defined as a hybrid regime which included elements of both flawed democracies and authoritarian regimes. It ranked in 83rd place out of 167 assessed countries, it was lower than Malaysia and Bolivia. The gap between the rich and poor had widened. According to the latest EU Progress Report of November 2007 regardless of anti-corruption strategy and anti-corruption laws and reforms, corruption was widespread and continued to be a serious problem in Albania. In 2007 Albania lost its first place as the most corrupt country in the world but the figures for Albania in fact presented an increase in the instances of bribery by 5% since the 2006 ranking. The grey economy was said to account for up to 50% of the official GDP which per capita was \$5,500 in 2007 compared with the UK per capita annual GDP of \$35,300. According to the most recent EU Progress Report there exists a particular problem of high youth and long term unemployment, women and young people under 25 years of age were disproportionately affected by unemployment.

295. The general picture of Albania painted by the expert evidence is of a country in which significant changes have occurred since the overthrow of the Communist regime in

1991. Ms Schwandner-Sievers expressed the view that Albania was undergoing an accelerated modernisation process involving a jump from a severely under developed media and communication technology to a global internet and mobile phone technology. There was a shift in almost exclusively oral to written or printed forms of inter-social communication. Since the overthrow of communism there have been massive internal and external migration flows. It was estimated that 30% of the population of Albania had migrated to the capital Tirana and 30% had left the country.

296. Patriarchal and heterosexually-defined norms still underpin the attitude of the authorities and of society at large. These are based on the idea of the family and family life, the integrity and prospering of which was at the core of the Albanian concept of honour. In Albanian society honour is based on the value assigned to the family, being married, having children, protecting one's wife, mother and sister and respecting parents. It is plain, however, that these traditional values are undergoing some change. The younger, mostly urban, generation challenge patriarchal traditions. This is most markedly so in Tirana, although the enormous migration to Tirana has also transported rural cultural backwardness together with the traditional attitudes towards family and women. In Tirana there is what was described as a very thin layer of avant-garde and cosmopolitan elites, but also a new and growing, if still underdeveloped, middle-class. Ms Schwandner-Sievers laid emphasis upon the other side of the coin, which was a large, socially and economically disadvantaged part of the population both in the cities and in the countryside which took pride in having recourse to indigenous traditions, but she said very little about those who might occupy a position in between both extremes.

297. The picture of Albanian society sought to be painted on behalf of the appellant was of a society that clung to traditional values, apart from a small elitist minority. The article entitled 'Honour Crime' in Albania, dated 5th January 2005, at Annex 1 to the first report of Ms Schwandner-Sievers, however, describes the case of the Quinami family who moved from the northern countryside to the village of Burxell in the area of Tirana. According to Eglantina Jermeni, Professor of Social Sciences at Tirana University, the change was like entering a whole new world. She said:

"Refugees come from the North in search of a better life, but they are (sic) never expected such unbridled freedom. They cannot adjust to this reality; they have other habits, they have lived differently".

The article went on to say these new freedoms, coming at the end of Albanian isolation and up to now most realised in the urban south, undermined the basis of the patriarchal condition. The article also quoted psychologist Elida Rrapti, author of a book on the change at the heart of the Albanian family, which illustrates the tension between the father of a family which had migrated to Tirana, who wanted to continue to control the family through violence, while his daughters realised that they could be independent. The article said that Tirana and other Albanian cities showed the image of independent women, wearing low-cut tops and mini-skirts. The article also quoted Agron Tufa, a young novelist, who said that in Albania taboos were breaking down. Ms Schwandner-Sievers agreed in cross-examination that although she described Agron Tufa as a member of the elite, he was not especially dealing with the urban elite.

298. This change in our view, is illustrated by a statement by Nasser Almalak in the interview undertaken on 9th May 2008, reported in Annex 3 of Dr Mai's report of 6th June 2008, in which he said it would not be a problem for a woman who is not known to be a lesbian to live away from her family independently. He said that she would be able to rent an apartment and work.
299. In cross-examination, when he was recalled, Dr Mai acknowledged the fact that many people had migrated abroad and had come back and there had been a developing urbanisation which produced a mentality in favour of the ability of single women to obtain employment. He said the development of the economy and the widening of the gap between rich and poor encouraged people to overcome their moral objections. When he gave evidence on that occasion he also said that in Tirana people would be more tolerant towards homosexuality, although they would be less so in rural areas where it did not feature in people's imagination. He said the attitude in Tirana would be similar to the attitude here, meaning in the United Kingdom. This in our view was extremely telling as an indication of change.
300. We readily accept the evidence of Ms Schwandner-Sievers, that with massive internal migration it may well be that rural cultural backwardness has been imported into the cities and that traditional customary practices, for example of marriage arrangements and exclusion of girls at home and the denial of higher education to girls in the name of *kanum* are now practices commonly encountered among the North Albanians settled in the suburbs of the capital of Tirana. What she says, however, in itself suggests that such practices would not normally be encountered by the ordinary inhabitants of Tirana who are not themselves immigrants from the north or family members of recent immigrants.
301. We are prepared to accept that the challenges to patriarchal traditions have produced anxieties among traditionally minded men whose authority has been threatened. That arguably helps to explain why domestic violence and less frequently honour crimes have become a problem in post-socialist Albania. Nevertheless in our view, the background material which we have quoted indicates that a more enlightened approach to life is not merely the province of an avant-garde elite. In our view the background material to which we have just referred demonstrates the danger of generalisation.
302. We take the view that in determining whether a particular individual would be subjected to a patriarchal and heterosexual approach in his or her family depends upon the circumstances of the particular case. As Ms Schwandner-Sievers herself said, in such a case it would be important to establish the degree of "traditionality" of the family.
303. A further factor which demonstrates change in Albania is the fact that according to Mr Bicaku, the new revised version of the psychological text book DSM IV which has been in use since 2004/2005 in the Faculty of Sciences views homosexuality as a matter of individual preference which has to do with personal identity rather than as a mental or hormonal disorder. In our view this renders the evidence of Mr DK unreliable, since he gave the impression that when GISH conducted its research, which was in 2006, homosexuality was regarded as a psychological disorder in the Faculty of Social Sciences. Mr DK said that often in the past various media carried

reports which contained discriminatory or anti-LGBT content using offensive/insulting language and in the past from time to time some newspapers published articles by so-called specialist denigrating homosexuality. In our view his use of the phrase “in the past” is significant and in itself an indication of at least the beginning of a change in attitude.

The position of lesbians in Albania

304. There is an almost complete absence of evidence about the position of lesbians in Albania.
305. Ms Schwandner-Sievers expressed the opinion, which she said was shared by other experts, that lesbianism was a comprehensive cultural taboo which explained why lesbians could not come out and were not known of or talked about in wider Albanian society. She herself had never heard any young Albanian refer to lesbian love or relationship and she could only imagine such a course or even an open display of such a relationship in the closed and socially protected spaces of avant-garde society in Tirana. Lesbians as a category were not catered for by NGOs as they were for example in Hungary.
306. Dr Mai's evidence initially was that while there were recorded incidents against gay men there were no recorded incidents against lesbian woman and as a result he was forced to speculate on the actual condition of lesbian women in Albania. He later modified his evidence in examination in chief, when he said there was one recorded incident, which was a reference to the arrest of Fatbardha, a woman whom he met but did not speak to on an occasion in May 2008 when he met and interviewed Nasser Almalak. She had been arrested with him and three transvestites/transgendered people in 2006 at “the hole” while Mr Almalak was distributing condoms as part of the regular outreach activities of the Albanian Gay Association. They were all accused of conducting sexual relationships in public premises. The lack of reported cases of violence expressed against lesbians led Dr Mai to speculate it could mean that they might be subject to an even higher level of invisibility and marginality than homosexuals which made them more vulnerable to abuse and less likely to receive appropriate protection.
307. While Dr Mai indicated that those with whom he communicated were of the view that lesbians were treated in the same way as homosexuals and therefore his speculation was reasoned speculation because it was based on the wider context, we take the view that what he said does remain speculative. Dr Mai reported that Nasser Almalak told him that lesbians could not openly express their lesbian identity without fear of discrimination and abuse and they kept it hidden, so it was difficult to see lesbian women in the park as they were usually kept well hidden at home. Dr Mai's evidence was that he was unable to contact any lesbian, apart from meeting Fatbardha, while he was in Tirana, although one of his heterosexual friends had known lesbians who had emigrated to the EU in the past to escape discrimination and to be able to live their sexual identities openly.
308. The Canada Country of Origin Responses to Information Requests, at item 9 of the respondent's bundle, quotes the Director of the Tirana-based Human Rights and Democracy Centre (HRDC) agreeing that homosexuals were reluctant to reveal their

sexual orientation and therefore an openly homosexual community did not exist in Albania (HRDC 26 June 2006). It said furthermore, the lesbian and gay communities did not mix, and organisations dealing with homosexual issues were mainly for gay men, not lesbians.

309. Dr Mai quoted Mr Jim Kreider, the spokesperson of GISH, who told him that GISH knew of a group of lesbian women who met but who were closed and elite. Mr DK mentioned that in a questionnaire of the LGBT community in Tirana they managed to obtain participation from three lesbian women only out of a total of 86 participants. He did not know of any lesbian or gay couples living together in Albania. If an Albanian lesbian couple did decide to live together and could afford to do so in theory they could only do so in Tirana. They would have to keep their relationship secret and be extremely discreet.
310. As it is suggested that lesbian women would be persecuted as homosexual men are in Albania, it is necessary to look at the position of homosexual men. The starting point must be the determination of the Tribunal in IM (Risk-objective evidence-homosexuals) Albania CG [2003] UKIAT 00067 in which it was held that there was no country background evidence which supported a reasonable likelihood that homosexuals as such in Albania were 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. The Tribunal was invited to consider two incidents only of ill-treatment of homosexuals by the police. The first related to an incident in March 1994 before the decriminalisation of homosexual relations between consenting adults in 1995, when three of the members of Showqata Gay Albania (SGA) were detained and severely beaten in Tirana Police Station. The second was an incident on 7th April 2001 when a Jordanian citizen, who was Secretary General of the SGA, which was clearly a reference to Mr Nasser Almalak, although he was not named and a friend, who was a transvestite, were assaulted in Tirana by four members of the Republican Guards on an occasion when they went to their barracks in order to meet a friend who was serving there as a conscript. They were attacked by four men in plain clothes and no one would come to their assistance. They were eventually permitted to make a formal complaint. One of the two then left the country and the other was able to successfully engage the attention of the Albanian Human Rights group who issued a statement condemning the ill treatment they had suffered and called on public opinion for the authorities to show tolerance and put aside homophobic prejudices and discrimination.
311. Ms Laing, in her skeleton argument, suggested that the background material appeared to document only two recent specific incidents of police harassment of gay men, in August 2006 when the secretary general of Gay Albania and three other were arrested on prostitution charges and in June 2005 when the Tirana police detained, insulted and physically mistreated a member of Gay Albania.
312. Ms Asanovic, however, relies upon eighteen specific incidents, seven general comments and a report on the trial of Nasser Almalak, set out in a schedule attached to her closing submissions.

313. The first reference, to three men severely beaten by the police in October 1994 is the same incident as that related by Dr Mai following the establishment of the Albanian Gay Association in March 1994. It clearly is a reference to the same incident referred to in IM.
314. The second item, which relates to an incident in which a man was kidnapped in 1995, seems to have been connected to the first incident in which the president of the SGA was abducted and warned that he would be killed unless he named both other members of the group and the group's supposed sources of foreign money. He later left and obtained asylum in the United States.
315. The third item relates to a group of 30 Albanian gay people who were arrested, interrogated and detained for hours by police in Elbasan in central Albania, in relation to a case of child abuse in 1998. Dr Mai reported that the person responsible for the crime was later found to be an elderly man totally unrelated to the gay scene of the town.
316. The fourth item relates to the drowning, in April 2001, of the 21 year old gay poet, Ilir Bellru, in the Tirana lake, an informal gay meeting point, which was immediately recorded as "suicide" against evidence of a physical struggle and violence.
317. The fifth item relates to the detention by police in September 2003 of eleven people hanging around in a park in central Tirana.
318. The sixth item relates to the arrest of the director of Gay Albania, a gay rights association, with three others in August 2005 on charges of prostitution. It was alleged by AHRG that the four were mistreated by other prisoners and insulted by prison officials.
319. The seventh item relates to an advisory opinion by Elsa Ballauri, Executive Director of AHRG, dated 3 February 2006, which said that Mr Altin Aliu of ALGA had been a victim of police violence and community discrimination several times. He had been detained and tortured by the police.
320. The eighth item relates to SL, a member of ALGA, referred to in an article entitled "Albania's Gay Flight" by Ben Andoni in Tirana dated 5 December 2007, which described how they were sitting in a park when two police vans pulled over. The officers got out of the van and dragged them away. One of the drivers came over to SL and kicked him repeatedly shouting "shut up you faggot".
321. The ninth item in the schedule is a reference in the same article to the first case registered by ALGA in 2002 when one of its members was granted asylum in the Netherlands through the assistance of AHRG, after being subjected to repeated psychological and physical violence from police officers.
322. The tenth item relates to AA who clearly is the same person referred to in the seventh item.
323. The eleventh item relates to a person mentioned in the same article, ML, of whom it was said he was applying for asylum because his life was in danger as he had to

leave Albania. His family rejected him totally after finding out that he was gay and had used violence against him and were now a threat to his life. The reporter was Ms Ballauri.

324. The twelfth item relates to an undated report entitled "State Violence in Albania" presented in part by the Albanian Human Rights Group which mentioned that on 30th August 2003 AHRG received information that a group of homosexuals had been detained in the police station in Tirana overnight. When the AHRG co-ordinator went to the police station the following day the individuals were released immediately. Police officials at the police station were heard to use foul language towards the individuals and openly displayed prejudicial attitudes. According police records the eleven individuals who were in the vicinity of a park close to the Ministry of Defence at 10.40 pm on 29th August 2003 were taken to the police station for verification.
325. The thirteenth item which alleges police harassment of people at the "hole" is the item referred to in Dr Mai's supplementary report and relates to an interview with Mr Almalak on 9th May 2008. That was the occasion when he said that in Albania there were no gay venues only parks and in Tirana the park now was the one behind the opera, the "hole", where you could find everything, prostitutes, transgendered people, lesbians and gay men.
326. The fourteenth item relates to an OSCE trial report contained in the GISH report on the arrest of Mr Nasser Almalak annexed to Dr Mai's supplementary statement. The report is dated 14th December 2006 and describes Nasser Almalak, Fatbardha Doku and three others with being charged with sexual intercourse in public places and prostitution in co-operation with others.
327. The fifteenth item, which refers to an AHRG investigation of 30th August 2003, is a repetition of the matter contained at item twelve.
328. The sixteenth item which relates to two men attacked by two vanloads of policemen, is a repetition of the item number eight.
329. The seventeenth item relates to a statement by Mr NK that in April 2005 several gay men reported to GISH a particular police raid at a cruising area when seven homosexual men were arbitrarily taken and driven from a park in Tirana to a police station and held without charge for almost the whole of the night. After their names and additional data were recorded they were released without charge and sent home. Mr NK went on to say, and this is listed as a general comment in the schedule, that since the beginning of 2006 police raids in the cruising areas of Tirana seemed not to target groups of homosexuals but they targeted single gay individuals sometimes.
330. The eighteenth specific item relates to transvestites severely beaten while police watched in August 2008. The source for that was Mr NK who stated that the weekly magazine MAPO gave a recent report in August 2008 denouncing the case of a transvestite who was severely beaten in the centre of Tirana by a young gang with sticks while two police officers watched from their police car without interfering.

331. It can be seen from this analysis, that the incidents involving misbehaviour by the police involved homosexuals who were known to be members of gay associations or who were detained by the police at known homosexual cruising areas in Tirana.
332. There were fourteen separate specific incidents over a period of approximately fourteen years. Leaving aside the death of Ilir Belliu, the responsibility for which remains a mystery, in only one instance were the police not involved, that relating to ML whose family had discovered he was a homosexual and sought to kill him.
333. Although Dr Mai's evidence was that his informants told him that the situation had worsened since 2006, the only specific incidents reported since then relate to the arrest on 17th August 2006 of Nasser Almakak and his companions, the attack on the transvestite while the police looked on in the centre of Tirana and the two men attacked by police in a park in Tirana.
334. As well as these specific incidents there are numerous anecdotal accounts of the arrest of homosexuals. Mr NK listed the three meeting places for gay men in Tirana and made the point that the big park with the artificial lake which contained trees and shrubs was where people were mostly arrested on the pretext that they had engaged in public indecency or disturbing "public peace".
335. What is a little surprising is that in Appendix B to the GISH report on the arrest of Mr Nasser Almalak, which reports interviews with him in January 2007, Mr Almalak is reported as saying that when he was arrested on 16 August 2006 he had gone to the area behind the culture palace to distribute condoms, which was an activity he had been doing for several years approximately three or four days a week. It seems remarkable that given the alleged persecution of homosexuals in Albania by the police, he should have been permitted to carry out this activity for so long.
336. The article entitled "Albania's Gay Flight" contains a quotation from a lawyer with the Albanian Human Rights Group, AHRG, to the effect that they knew from the data they had that there was a community of nearly 3,500 homosexuals in Tirana. The author stated that repeated cases in the past had taught the homosexual community that in a traditional society like Albania going public with their sexual orientation meant losing their jobs, risking threats and possible rejection by their families.
337. Dr Mai relied upon a statement in the US State Department Report on Albania dated 2007 that the Albanian human rights group reported that during the year, police harassed members of the Albanian Gay and Lesbian Association and other known homosexuals searching their homes without a warrant.
338. Dr Mai said it was important to underline that the expression "*known homosexuals*" needed to be interpreted according to the everyday reality Albanian gay people lived in. It referred to people who were known to be gay because they were members of gay associations, to people who were seen hanging around the few existing informal gay meeting places (parks and cruising areas) and to people who could be identified as such according to arbitrary factors such as being "effeminate" (in the case of gay men) or "butch" (in the case of lesbian women), being unmarried, or living with a person of the same sex who was not a member of the family.

339. In our view the evidence supports the proposition that homosexuals known to be members of gay associations and those who visit cruising areas in the centre of Tirana are likely to be harassed and on occasions ill-treated by the police but we are not satisfied that merely being effeminate or butch, being unmarried or living with a person of the same sex who was not a member of the family, would in itself attract the risk of serious harm from the police for reasons of sexual orientation.
340. We therefore take the view that it can be said generally that those women who carry on lesbian relationships in Albania do so privately and without any public advertisement of their sexual orientation. Some may do so out of respect for the views of their family members and the social norms accepted and valued by Albanian society generally. Others may do so out of fear of discrimination if their sexual orientation were disclosed. Others may be motivated by a mixture of both elements.
341. What is clear is that in general terms, lesbian women do not frequent “the hole” and do not join LGBT organisations. Therefore there is lacking the opportunity for them to harassed or persecuted by the police.
342. Moreover, although there is anecdotal evidence of lesbians emigrating from Albania so as to be able to openly live a lesbian lifestyle in countries where such is accepted, there is no evidence of any lesbian woman in Albania, apart from Fatbardha Doku, suffering any harm on account of her sexual orientation. Even in her case it is likely that her ill-treatment was as a result of her association with Nasser Almalak and the others with whom she was arrested at the “hole”.

Sufficiency of protection

343. Ms Schwandner-Sievers said it was noteworthy that even though, according to the US State Department Report on Human Rights Practices 2008 (relying on the Albanian human rights group AHRG), homosexuals were (as were members of the Roma and Balkan/Egyptian communities) particularly vulnerable to police abuse and subject to discrimination regardless of the law, the Ombudsman made no mention of their plight. Dr Mai said that very often crimes committed against gay people were not prosecuted according to the law and easily dismissed as accidents. He gave as an example the drowning of Ilir Belliu, a 21 year old gay poet in the Tirana Lake, an informal gay meeting point, which was immediately filed as suicide despite evidence of a physical struggle and violence. He relied upon the US Department of State 2007 Albania Country Report which repeated claims by the Albanian Gay and Lesbian Association that the police arbitrarily arrested homosexuals and then physically and verbally abused them while they were in detention and that during the year police harassed members of the Albanian Gay and Lesbian Association and other known homosexuals, sometimes searching their homes without a warrant. He quoted the views of Nasser Almalak that the police were actively trying to curb the emergence of any form of LGBT movement by deliberately attacking the heads of the movement. Although many of the incidents which occurred in this context happened a considerable length of time ago, nonetheless there is evidence before us of fairly contemporary incidents involving the police taking action against the leaders or members of Gay rights associations.

344. We recall that Ms Asanovic asked Dr Mai whether it could be said that the police were involved in arresting people in the vicinity of “the hole” because people were looking for sex. He said that despite the fact that doing so was not forbidden, those who did were always under surveillance. He attributed the behaviour of the police to their lack of education and training, to the fact that they were on night duty and often drunk and to the fact that they often picked on gays as an activity to help them pass the night away. When Ms Asanovic put to him that the 2004 US State Department Report suggested that the police explained the arrests by reason of breaches of public order, he said the police could not say that they arrested people because they were gay and they might think that deviance was a threat to public order. He did, however express the view that there was a level of implicit approval at a higher level
345. The reply of Dr Mai raises the issue whether it can be said that the misbehaviour of the police is at a low level and carried on without the approval of higher ranking officers and not tolerated by the authorities generally
346. In Bagdanavicius & Anor, R (On the Application of) v Secretary of State for the Home Department [2003] EWCA Civ 1605 the Court of Appeal held that sufficiency of state protection, whether from state agents or non-state actors, meant a willingness *and* ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum had a well-founded fear and the effectiveness of the system provided was to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event.
347. In paragraph 37 of his judgement in Svazas v Secretary of State For the Home Department [2002] EWCA Civ 74 Sedley LJ said:
- “Whether singling out Communist prisoners for assault (and no doubt other types of prisoner too) is systemic or endemic or sporadic, it necessarily represents an initial failure of protection on the part of the state. If so, the critical question - adopting Lord Hope’s approach - will be whether what the state does to stop it happening reaches a practical standard appropriate to the duty it owes all of its citizens. If discriminatory brutality is found to be too widespread to be written off as delinquent activity of the sort that could occur in any system, the paradigm will shift away from the *Horvath* end of the spectrum towards the less explored class of state agents who take advantage of their power but do not act on behalf of the state: in ordinary parlance, a police force whose members are out of control. Even in such a context a practical standard of protection does not require a guarantee against police misconduct, but it does, as Professor Hathaway says, call for timely and effective rectification of the situation which is allowing the misconduct to happen. For reasons given earlier in this judgment - essentially because it has a different starting point - this is a different model of protection from that which on authority is called for by the Convention when the source of the fear of persecution is people whom the state has to police but who themselves do not deploy or therefore abuse the state’s own power. How different will depend on the state of affairs disclosed by the evidence.”
348. Although the report of the Commissioner for Human Rights to the Council of Europe makes it plain that there is a draft law before the Albanian Parliament explicitly outlawing discrimination on the grounds of sexuality and although some progress has been made in combating corruption in the police, we have not seen evidence to show

any such timely and effective rectification of the situation which is allowing the misconduct to happen. We take the view that attempts to prevent the emergence of an effective LGBT movement cannot be said to lack the knowledge and approval of the authorities and the misbehaviour of the police towards those apprehended at known cruising areas is designed to discourage those apprehended from frequenting those areas, and is likely to be condoned by those in authority, given the incidents of mistreatment of those in custody.

349. In relation to the adequacy of state protection from the threat of violence from a member of a woman's own family the starting point must be the determination of the Tribunal in DM (Sufficiency of Protection - PSG - Women -Domestic Violence) Albania CG [2004] UKIAT 00059, in which the Tribunal held that there was adequate state protection against the threat of violence from the appellant's former boyfriend. Since the determination in that appeal the Albanian authorities have taken further steps to deal with the incidence of domestic violence. In 2003 a new Family Code was enacted which contained specific provisions prohibiting forced marriage and domestic violence. Although Ms Schwandner-Sievers drew our attention to an Amnesty International report which found that women felt exposed to socio-cultural pressures not to divulge internal family problems to the outside world, nonetheless it is clear that with the possible exception of traditional families in and from the north of Albania, Albanian societal attitudes are undergoing considerable change for the better and no evidence has been drawn to our attention which demonstrates that if the police were involved in a situation of domestic violence, they would failed to take appropriate action. We take the view that no member of a woman's family, against whom a complaint was made, would wish to reveal the woman's sexual orientation to the police, so that a woman under threat of violence from a member of her family would not have to fear the revelation of that orientation to the police by making a complaint. In these circumstances we take the view that there would be an adequacy of state protection available to a woman who was at risk of domestic violence on account of her sexual orientation.

Particular social group

350. An issue has been raised between the parties as to whether membership of a particular social group should be decided before or after the issue of persecution. If as it appears, lesbianism is a comprehensive cultural taboo in Albania, then it would appear that lesbian women in Albania would be regarded as sharing a common characteristic and/or would be perceived as a group by society and so satisfy the definition provided in the UNHCR Guidelines on International Protection, approved by the House of Lords in Fornah.

351. Membership of a particular social group, however, in the absence of persecution on that account cannot attract the protection of the Refugee Convention. As Lord Bingham said in paragraph 17 of his opinion in Fornah, the Refugee Convention makes plain that a person is entitled to claim recognition as a refugee only where the persecutory treatment of which the claimant has a well-founded fear, is causally linked with the Convention ground on which the claimant relies.

352. Therefore, in view of our conclusion about the lack of a well-founded fear of serious harm on the part of lesbians in Albania, a concluded finding on this issue would not

be constructive, despite it having been thought desirable by the Tribunal which found a material error of law in the determination of the immigration judge.

The possibility of a single woman living without family support in Tirana

353. So far as the risk of a single woman without family support returned to Albania facing persecution or serious harm by virtue of facing poor socio-economic conditions is concerned, we have no difficulty in accepting that claims of this kind can in principle succeed.

354. We do not accept the submission of Ms Laing, put forward in her skeleton argument, that as a matter of principle, the appellant's claim that she would be returned to destitution cannot fall within the Refugee Convention. Her argument in this respect was worded in identical terms to the argument rejected by the tribunal in its recent determination in AM & AM (armed conflict: risk categories) Somalia CG [2008] UKAIT 00091 in paragraph 79 of which the Tribunal observed:

"We disagree, at least insofar as this argument is directed at the meaning of persecution, rather than the requirement under the 1951 Convention to show a convention ground or reason. The meaning of persecution is set out in Reg 5 of the 2006 Protection Regulations and (we repeat) in terms which in our view can be taken broadly to mirror that which has been accorded by the UK courts and this tribunal (and its predecessor) since Horvarth [2000] Imm AR 552(HL). Given that persecution must be seen, therefore, as harm in the form of severe violations of basic human rights, it could only be right "as a matter of principle" to exclude claims based on forced subsistence in an IDP camp if human rights law precluded it. But, as we shall go on to explain, human rights law does not preclude it. Albeit holding that claims for protection against refoulement based on dire socio-economic circumstances are normally not decisive when considering Article 3 ill-treatment, the Strasbourg Court has not excluded that in certain extreme circumstances, such circumstances could give rise to a violation of a nonderogable right: see below paras 86-88. Further, as has been made clear by the Court on many occasions (e.g. in Kalashnikov v Russia [2002] ECHR 596) and by UK courts and the Tribunal, for ill-treatment to arise under Article 3, it does not necessarily have to be intentional or deliberate: see R (On the application of Adam) v Secretary of State for the Home Department [2005] UKHL 66; [2006] 1 AC at [55]. **Hence, whilst there will always be heavy factual obstacles in the way of a finding that socio-economic circumstances can constitute persecution, there is no reason of principle why a claim of this kind cannot succeed.**" (emphasis added).

355. The high threshold for success in such a claim, however, was highlighted by the Court of Appeal in 'Q' & Ors, R (on the application of) v Secretary of State for the Home Department [2003] EWCA Civ 364. In paragraph 54 of his judgement Lord Phillips MR said:

"As the Attorney-General pointed out, decisions of the European Court of Human Rights, typically O'Rourke v United Kingdom (39022/97, 23 June 2001), make it clear that the state's failure to provide shelter does not by itself amount to inhuman or degrading treatment. But, as he himself accepted, it does not follow that in a case of sufficiently acute individual need – perhaps, as suggested in argument, that of a person who is not only destitute but blind - no positive obligation can arise; and such cases as D v United Kingdom [1997] 24 EHRR 423 clearly establish that a breach of the

constant negative obligation can occur where an affirmative act of the State is such as to result, indirectly, in inhuman or degrading consequences for the individual.”

356. In paragraph 59 he said:

“Destitution is an emotive word, and it might be argued that denying support to the destitute is necessarily inhuman and degrading treatment. Such an argument has not been advanced before us, and for good reason. Mr Blake has accepted that there is a margin between the condition that renders an asylum seeker destitute for the purposes of the Asylum Support Regulations, and section 95 of the 1999 Act, and the condition to which an individual must sink before he can contend that he is a victim of a breach of Article 3. As to the former, an individual will, by virtue of section 95(3), be deemed to be destitute if his living accommodation is not *adequate* and the regulations provide for a minimum sum of money or money's worth which must be provided by way of subsistence. The degree of degradation that must be demonstrated to engage Article 3 falls significantly below this definition of destitution. This can be illustrated by reference to the decision of the Strasbourg Court in *O'Rourke v United Kingdom*. The applicant was evicted from temporary accommodation provided for him when he came out of prison. He lived on the streets, to the detriment of an asthmatic condition and a chest infection from which he suffered. The Strasbourg Court held that this experience did not attain the requisite level of severity to engage Article 3.”

357. So far as the issue of whether it would be possible for a young woman to lead an independent life in Albania without the approval of her family is concerned, Dr Mai expressed the opinion that it would be very difficult for her to do so not only for economic reasons but mostly because of the endurance of patriarchal values and practices regimenting the social mobility of women in contemporary Albania. For the reasons given in the section of this determination dealing with change in Albania we cannot accept this statement as of general application.

358. Although Ms Schwandner-Sievers' opinion was that an unskilled woman without a family network of support would be highly disadvantaged in finding employment, housing and at particular risk of exploitation, Nasser Almalak, in the interview of 9 May 2008, referred to in Annex 3 to Dr Mai's second report, suggests the contrary, at least so far as Tirana was concerned. When asked whether it would be possible for a woman to live and work independently of her family he said that it was not a problem if it were not known she was a lesbian. Nasser Almalak is likely to be a person knowledgeable about the recent changes in Albanian society, particularly in Tirana and we think that his view can be relied upon.

359. The fact that jobs are advertised in Albanian newspapers disproves the assertion of Ms Schwandner-Sievers that there are no openly accessible employment possibilities for young unskilled women in Albania.

360. Although the UN agency IFAD stated that women faced discrimination in owning property and starting a business, Ms Schwandner-Sievers did not dispute the statistics published by Instat that women made up 70% of private business leaders and the largest registered number of businesses run by women was concentrated in Tirana (31%). Although she explained those statistics by saying there was an element of elite continuation, she had to concede that not all were from the elite.

Moreover it is evident from her answer in cross-examination that there are a greater number of women enrolled in universities in Albania than men.

361. A point of concern to us is that both Ms Schwandner-Sievers and Dr Mai were ignorant of the existence of newspapers advertising unskilled jobs for women in reaching their conclusions as to the opportunities of employment for women without family support in Albania.
362. The appellant herself, before being shown the newspaper advertisements which the respondent relied upon, conceded that newspapers in Tirana might have job adverts.
363. When Dr Mai was initially asked by Ms Lang in cross-examination whether the newspapers in Albania advertised situations which were vacant, he said that they did but they were for the higher skilled and they were for internal candidates. When specifically asked whether there were any newspapers in Albania like the Evening Standard in London which had pages of adverts for low skilled jobs, he said that there were not. He had never heard of anyone going and asking for work directly.
364. In her latest report dated 22nd November 2008 Ms Schwandner-Sievers explained that her recent research enquiries revealed that Dr Rigels Halili thought that the publication of job adverts was a very recent phenomenon.
365. This would not appear to be the case since when Dr Mai gave evidence on 26th November 2008 he said that such job advertisements were present in most Albanian daily newspapers but the newspapers were not used to advertise private jobs until 2000. He gave the example of the "Celesi" weekly paper which was used increasingly for job offers after 2000.
366. It may very well be that job advertisements in some newspapers are a recent phenomenon but the advertisement of jobs in our view in any newspaper in Tirana cannot be said to be of recent origin.
367. We entirely accept the reason why Dr Mai was unaware of these job advertisements, namely, that he had been involved in several research projects regarding the labour market but no respondent said that they used newspaper advertisements. Although in his curriculum vitae Dr Mai claims an ability to read Albanian at a level of 4 on a scale of 1 to 5, it is plain that he had not, prior to the hearing, familiarised himself with the contents of newspapers in Tirana.
368. We are also prepared to accept that Ms Schwandner-Sievers was unaware of such newspapers. The fact that both Dr Mai and Ms Schwandner-Sievers were unaware of them, however, necessarily detracts from the value of the opinions which they have expressed about the employability of women without family support in Tirana.
369. We accept the point made on behalf of the respondent, that there would be little point in advertising jobs which do not need to be advertised if they could be filled by contacts made through family networks.
370. In view of the fact that Dr Halili wrongly believed that the publication of job adverts was a very recent phenomenon, we have no confidence in his assertion, relied upon

by Ms Schwandner-Sievers in her latest report, that without family connections a young single woman would be deprived of the only tools to get a job.

371. We also bear in mind the evidence given by Dr Mai on 26 November 2008 that all jobs have to be advertised in local job centres within seven days of becoming available and that establishments such as factories and bars have notices displayed outside their premises advertising available jobs.
372. We therefore take the view that there are opportunities for employment for skilled, semi-skilled and unskilled women in Tirana without family contacts. The question about whether a particularly individual would be likely to be able to obtain such employment is a matter which has to be decided on the individual facts of each particular case.
373. So far as the question of the ability of a person without family support to obtain accommodation is concerned we have taken into account the Amnesty International paper dated 21st November 2007 entitled "Albania 'No place to call home' – adult orphans and the right to housing" as it has been suggested that a person without family support may be likened to an orphan. It was said that although Albanian law recognised the particular vulnerability of orphans and guaranteed them a range of rights including the right to priority of housing, in reality their rights were rarely fulfilled. The report shows that the state makes adequate provision for orphans up to the age of 14 or 15 in orphanages and thereafter in the Halls of Residence attached to secondary schools, which in practice are attended by most children who have been in orphanages.
374. Although the picture painted by the report of adult orphans was bleaker, with examples given of adult orphans living in squalid conditions, on a more positive note the report stated that a list of 52 orphans living in residence halls or in temporary rented accommodation in Shkodr compiled in 2005 showed that only one was under 20 years of age at the time and most were 25 years of age or older. The fact that there were none younger appeared to be due in part to the work of certain NGOs which offered temporary accommodation or training and employment programmes, which in some cases enabled orphans and other young people at risk eventually to earn enough to rent on the open market.
375. We take the view that the evidence of Mr DK, that considering the average monthly wages, the price of commodities and the level of rent for residential properties, it was very unlikely that a single person would be able to afford to rent a flat and live on his/her own, cannot be relied upon having regard the success of the NGOs referred to in the report in helping orphans to the extent that they were able to be economically independent. It is also apparent that the opinion of Mr DK was based on the cost of renting an unfurnished flat rather than lodgings.
376. As well as NGOs, there are a number of women's organisations in Tirana who offer help to women, eight of which were listed in paragraph 27 of Ms Laing's skeleton argument, the last of which offered an employment agency for women, and there are state run employment programmes, one of which is targeted specifically at unemployed women. This programme aimed to integrate marginalised women such as Roma, ex-trafficked women, older women and women with disabilities.

377. Although Ms Schwandner-Sievers expressed the view that the success of these programmes was not effectively monitored and none specifically targeted lesbian women and although Dr Mai suggested that they were not viable in the long term, nonetheless there is no doubt that these programmes exist and in view of the fact that lesbianism is not acknowledged in Albania, it is not surprising that there are no programmes which specifically target lesbian women.
378. In our view taking account of the totality of the evidence before us it cannot be said that there is a real risk that a woman without family support in Albania would suffer destitution amounting to inhuman or degrading treatment resulting in a breach of her rights under article 3 of the ECHR or persecution.

A summary of our general conclusions

379. While in general terms although patriarchal and heterosexually defined norms still underpin the attitude of the authorities and of society at large towards lesbians in Albania, in Tirana, where the younger, mostly urban, generation challenge patriarchal traditions, there are indications of change in the attitude of ordinary inhabitants of Tirana who are not immigrants from the north or family members of recent immigrants.
380. A lesbian woman, whose sexual orientation becomes known, may be at risk of harm from members of her family, particularly if she is from a traditional family from the north of Albania, but each case must be determined on its merits. In such a case, however, it is likely that there would be an adequacy of state protection.
381. Although it is no longer illegal for consenting adults to have homosexual relations in private, homosexual men known to be members of gay associations and those who visit cruising areas in the centre of Tirana are likely to be harassed and on occasions ill-treated by the police and in individual cases homosexual men may be at risk of harm from members of their families.
382. In general terms, lesbian women do not frequent cruising areas and do not join LBTG organisations. Therefore there is lacking the opportunity for them to be harassed or persecuted by the police.
383. There are few, if any, recorded incidents of harm befalling lesbian women. Those women who carry on lesbian relationships in Albania do so privately and without any public advertisement of their sexual orientation. Some may do so out of respect for the views of their family members and the social norms accepted and valued by Albanian society generally. Others may do so out of fear of discrimination if their sexual orientation were disclosed. Others may be motivated by a mixture of both elements.
384. In general terms in Albania women of lesbian orientation are able to carry on lesbian relationships discreetly without attracting the risk of serious harm. In any particular case where the safety of the return of a lesbian woman to Albania is in issue, it will have to be determined whether she is likely to behave discreetly upon return and if so whether “discretion” is something that she can reasonably be expected to tolerate, in

the light of all of the circumstances of the case, including the social norms and religious beliefs commonly held in Albania. Such a person will only establish a right to refugee status if she can establish that the apprehended violation of her fundamental rights is likely to attain a substantial level of seriousness.

385. It cannot be said that without more there is a real risk that a woman without family support in Albania would suffer destitution amounting to inhuman or degrading treatment resulting in a breach of her rights under article 3 of the ECHR or persecution, but each case must be determined on its own facts.

The position of the appellant

386. So far as the appellant herself is concerned, our starting point must be the credibility findings of the immigration judge, some positive and some negative, which were ordered to be preserved.

387. In paragraph 19 of her determination the immigration judge accepted that the appellant was a lesbian. She accepted that it was likely that she had been disowned by her family but she discounted her alleged suicide attempts.

388. In paragraph 20 of her determination, by implication, she accepted that the appellant had a secret three year relationship with a woman called Mira and that no one knew of or suspected the relationship at the time which was conducted discreetly and secretly. She said that the only people who knew of her sexuality were Mira, her mother and brother (and possibly by now her father). The immigration judge found there was no reason to think that the appellant would behave any differently than discreetly in the future.

389. Before moving on, it is appropriate to deal with the unpreserved finding that Mira, the appellant's mother and brother and possibly her father, who knew about her sexuality were highly unlikely to have told anyone else. Given the shame which it is said that the revelation of lesbianism would bring with it in society in Albania and given in particular Dr Mai's evidence that it was unlikely that dirty linen would be washed in public, we form the view that it is indeed highly unlikely that the appellant's homosexuality would have been related by any of those mentioned to anyone else.

390. In paragraph 21 of her determination the immigration judge found that there was a reasonable likelihood that the appellant's brother beat her when he first found out about the relationship with Mira, but she did not suffer "three or four" beatings by her father because of this. The immigration judge found that she remained living at home for several weeks after this without being assaulted or disowned. There was no suggestion that the appellant had ever been threatened with death for dishonouring her family. She said that indeed she had decided to leave for the United Kingdom before she told her mother what the problem was and before her brother beat her.

391. The immigration judge's conclusion therefore was that when she decided to leave Albania, the appellant did so, not because she had been persecuted for her sexuality or because she had been the subject of domestic violence, but because she feared being married against her will. We acknowledge that such was capable of amounting

to a fear of persecution and we bear in mind paragraph 339K of HC 395, as amended, which provides that the fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

392. In assessing the issue of whether there would be a real risk of serious harm to the appellant if she were returned to Albania, we think it important to make findings on the type of family from which the appellant comes and about the appellant herself.
393. Mr DK's view was that, like every other low income traditional Albanian family, members of the appellant's family may think she should be married and not be living in the parental home. One of their most natural preoccupations would be to find male suitors for her. His opinion was based on the premise that the appellant comes from a low income traditional Albanian family. In her first report Ms Schwandner-Sievers expressed the view that the appellant's mother's recourse to the traditional metaphysical explanation that the 'evil eye' was responsible for her daughter's sexuality and her brother's physical and psychological violence, were indications of a traditionally minded family. She also expressed the view that the appellant's parents arranged marriage was an indication of "traditionality". In oral evidence she said that it was important to establish the degree of "traditionality" of the family and important indicators would be educational background, work and income, social relations, neighbourhood, peer groups and evidence of traditional practices and values.
394. In cross-examination it was apparent Ms Schwandner-Sievers knew little about the background of the appellant's family which she said she had not investigated. In re-examination she said that the domestic violence by the appellant's father could be attributed to alcoholism. She also said that her brother's approach could be due to a pathological state.
395. The appellant was born in Tirana. Her parents were born and brought up in Tirana. Her father was a skilled man. By profession he was a carpenter, preparing sets for the theatre at the Institute of Arts, where he had been employed for more than 20 years. The appellant's evidence was that her father read a lot of books and was of average intelligence. Books were things which were found in her home. She said that there were many books there and it was usual to have books in Tirana houses. She herself had a taste for reading books. She agreed with Dr Bell that she read Albanian books, that she was reading the work of the novelist Hadare and also another novel called "Wine" which was based on an individual's odyssey. In the United Kingdom she read books in Albanian which she got from the library. Her mother was a seamstress and she helped in taking measurements and possibly making deliveries, although her evidence was contradictory on this. She had aspirations for her future. She wanted to be independent and not have a life like her mother's. She agreed with Ms Laing that she was really quite intelligent. She had an extended family whose members also lived in Tirana.
396. We are therefore satisfied that the appellant's family cannot be likened to a typical low class and underprivileged family from the north. Although the appellant's family cannot be described as part of the Tirana elite, nonetheless the family roots are in

Tirana. The appellant's father has had an occupation in which he certainly may have encountered members of the elite. The fact that he is well read and has passed his liking of reading onto the appellant is a sign that the appellant's family is not from the lower orders of society. Indeed it was suggested by the appellant that her father was indifferent to her confession that she was a lesbian. The fact that the appellant's mother had it in mind that her daughter should marry, in our view is not an indication of traditionalism nor is the outburst of violence by her brother. We find it to be significant that she remained at home without any further incidents of violence by her brother. We also take the view that set against the family circumstances which we have described above, the reference to the "evil eye" by her mother is not an indication of the family's traditionalism. Nor is the fact that the appellant's parents' marriage was arranged.

397. Although the news that the appellant had a lesbian affair with Mira and she did not want to marry because she was a lesbian was not welcome news and was a shock to her mother and brother, we find that there is no real risk that any member of the appellant's family would do her or cause to have done to her serious harm. We take the view that had the appellant remained at home attempts would have been made to persuade her to marry but we are not persuaded that if she had refused she would have been subjected to further physical violence or indeed that an attempt would have been made to persuade her to kill herself. We do think it likely, however, that she would have been disowned and required to leave the family home, just as now her return has been refused unless she were to agree to abandon her lesbianism and marry. We take the view that if she were to return to a different area of Tirana and live away from home no member of her family would show any adverse interest in her.
398. In paragraph 1 of her closing submissions, Ms Laing submitted that the Tribunal should reopen the issue of whether the appellant's family had disowned her. It was suggested that there were a number of features which justified this approach. She had not been turned out of the family home immediately after having been assaulted by her brother. She lived in the family home without further incident from September 2005 until February 2006. Moreover, there was evidence, not before the immigration judge, which stated that the appellant was in regular telephone contact with her mother. Furthermore, it was unlikely that any members of her extended family knew of the fact that she was a lesbian. It was also suggested that she had been more forthcoming on some issues to Dr Bell than to her advisers, for example the fact that she worked at home with her mother for five years, which was not mentioned in any of her earlier statements.
399. At the beginning of the second stage reconsideration before us, both parties were aware of the fact that the positive and negative credibility findings were to be preserved, with one exception, and it was not suggested during the course of the hearing on behalf of either party that preserved findings ought to be re-opened. It seems to us that it would be wrong at this stage to reopen any of those findings and this includes the finding by the immigration judge that the appellant had made no attempt at suicide, unless there had been post-hearing developments which justified so doing.

400. In any event although the immigration judge found that the appellant had not been disowned while she remained at home after revealing her sexual orientation, she found that she had been disowned at the date of the hearing. This finding, expressed in paragraph 19 of the determination, seems to have been based on the background material relating to attitudes in Albanian society and the appellant's evidence that when she telephoned her mother her mother told her that the appellant was dead to them.
401. Although it is evident that since the hearing, the appellant has been in regular contact with her mother by telephone, so that it clearly cannot be said that she is dead to her mother, her account is that she would not be accepted back home unless she abandoned her sexual identity and agreed to marry. This is what Ms Asanovic described as "conditional disowning". Even if the appellant was astute enough to realise that the question whether her mother would accept her back home needed to be asked, her account remains that she has been conditionally disowned and there is in our view, no proper evidential basis for setting aside the finding of the immigration judge. We therefore approach the issue of the risk to the appellant on return on the basis that unless and until she were prepared to agree to be married, she would not be permitted to return to her family home.
402. It is in this context that we consider the issue of forced marriage. We appreciate that there is legislation in Albania which prevents forced marriage but the appellant's marriage would be forced only in the sense that she would be obliged to agree to marry as the price of returning to the family home.
403. In examining the issue whether the appellant could be expected to tolerate whatever circumstances are likely to arise were she to return to Albania, we have to take account of the evidence before us, as to how the appellant would be likely to behave, which necessarily includes the evidence as to how she has behaved up to now.
404. It is perfectly plain that the appellant was able to conduct her lesbian relationship with Mira in Albania without attracting any adverse attention to herself or Mira whatsoever. She said that since friendships among women were common, it was regarded as perfectly normal for them to sleep over at each others homes. Her refusal to be married never attracted the suspicion that she was gay. It was she herself who revealed her lesbian relationship with Mira to her mother. As she told Dr Bell her desire was to remain anonymous and not to break the unwritten code in Albania.
405. The appellant told Dr Bell that she did not behave in the United Kingdom in a particular "gay way" which was common in the gay community. She said in evidence-in-chief that since being in the United Kingdom she had not been ready to join the highly promiscuous gay scene but she felt ready to enter into a relationship should she find the right person. By the 26th November 2008 she had been in the United Kingdom just over two and a half years. In that time she had not formed a lesbian relationship and although it is plain that she visits a public house in Southend, which is known as gay meeting place, that apart, she has not conducted herself in the United Kingdom or sought to do so in a way which would attract attention if she were to do the same in Albania. She has not joined any LGBT organisation. It is plain that while in Albania the appellant revealed to her friend, Esmeralda, who is not a lesbian, that she was a lesbian. It is also the case that in the United Kingdom she has

Albanian friends who know about her sexuality and she was comfortable with that. She agreed with Ms Laing that even in the United Kingdom she was discreet about her homosexuality.

406. Although it was the appellant's claim that if she were to return to Albania she would have to repress her sexuality, we take the view that apart from not being able to visit gay cafés, since there are none, she would not have any desire to express her sexuality in any way different from the way in which she has expressed it in the United Kingdom. The appellant was concerned that if she were able to live on her own, away from her family in Albania, life would be miserable, she would be called names by people if they realised what her sexual orientation was and she would suffer discrimination and harassment, but in our view, just as there was no reason for anyone to suspect that she was carrying on a lesbian relationship with her friend Mira, there is nothing about her which in itself would reveal to others her sexual orientation. Even her mother, who knew her best and who clearly loved her, had no inkling that her daughter was a lesbian until she revealed it to her.
407. We do not share Dr Mai's view that the appellant's appearance is that of a butch lesbian. We do not accept that the fact that the appellant is unmarried would lead her being identified as a lesbian.
408. Mr DK said that women were expected to be married between the ages of 20 and 25 and that after this age women were considered less attractive for marriage and it became harder for the family to find suitors for their daughters. Based on this evidence it must be the case that there are many women in Tirana who have not married because they or their parents have not found suitable husbands. It defies reason to suppose that they are all regarded as lesbians. We take the view that the appellant would conduct herself discreetly as a lesbian in Albania and that it would be entirely reasonable in the circumstances to expect her so to do.
409. We have taken into account the submission contained in Ms Asanovic's closing submissions, based upon the evidence of Dr Bell, that on account of her paranoia, the appellant would not be able to keep her sexual orientation a secret. The position is that the appellant was able to keep her lesbian relationship with Mira a secret while it continued over a lengthy period in Albania. It was only when her mother pressured her into considering marriage that she revealed it to her and no-one else. There is no evidence that anyone suspected that she was a lesbian. There is no evidence that while in the United Kingdom, where the appellant is able to be more open about her sexual orientation, she has been obliged by her condition to reveal her sexual orientation to anyone to whom she did not wish to reveal it. Dr Bell conceded in cross-examination that the expression of the appellant's paranoia in feeling that she was being followed could not be disentangled from her anxiety about her immigration status. In these circumstances we are not satisfied that the appellant would not be able to continue to be discreet about her sexual orientation in Albania.
410. It is also the appellant's case that with the economic situation in Albania and her lack of any particular skills, she does not think she could obtain employment which would permit her to pay for accommodation and have enough money to support herself. Before dealing with this aspect of her claim we think it right to deal with her medical condition which was dealt with at length by Dr Bell in his report.

411. Just as the respondent is bound by the findings of the immigration judge that the appellant had been disowned by her family, so is the appellant bound by the immigration judge's findings that she had not attempted suicide.
412. In this regard there has been no change in the appellant's circumstances since the finding of the immigration judge. We merely observe that the appellant's evidence in this regard before us has been characterised by contradictions just as it had been before the immigration judge.
413. In answer to question 90 in her asylum interview, which took place on 9th February 2006, she said that she had tried to commit suicide in many ways by taking pills or hanging herself. In answer to question 92 she said the first time she took an overdose of medication, then she tried to commit suicide using a knife and then she tried to hang herself. In answer to question 96, in relation to the attempt to harm herself with a knife, she said she used a bandage to stop the bleeding. In relation to the attempt to hang herself she said she tied up a rope at home and put her head through the loop but was disturbed by her mother's arrival. It is the case that the appellant did not tell Dr Bell of any of these suicide attempts when he saw her on 21st May 2008 and 17th June 2008. On the contrary he recorded that there had been no suicide attempts or episodes of self harm. By then, in her statement dated 11th May 2006, the appellant had said it was not true that she tried to commit suicide on several occasions and there may have been a misunderstanding during her asylum interview. In her statement she said that she tried to commit suicide once, when she tried to cut her left wrist with a kitchen knife.
414. When the appellant was asked by Ms Asanovic whether what she had said in her statement of 11th May 2006, namely that she tried to commit suicide by cutting her wrist, was true, the appellant insisted that she had told the truth. When Ms Asanovic pointed out to her that she had not told Dr Bell of any suicide attempt and asked whether what she had told Dr Bell was true, the appellant said that she had told the truth to Dr Bell.
415. The appellant gave almost identical answers when these two conflicting accounts were put to her by Ms Laing but this time when asked to explain the discrepancy she said that she started to cut her wrist but did not continue. When cross-examined by Ms Laing the appellant insisted that the answer she gave to question 27 of her asylum interview, that her father had beaten her because she was gay, was true. When questioned further she said that when her father found out he beat her. She changed her account, however, when her attention was drawn to her statement dated 11th May 2006, in which she said that her answer in interview was not true and when she disclosed her sexual identity her father did not even get involved.
416. It is also the case that the appellant gave further inconsistent answers on this topic in re-examination. Initially she said that she thought that her father knew about her homosexuality because her mother may have told him. When Ms Asanovic asked her if her mother had ever said anything to her about what her father knew she said she told her that he was not interested in what she was. Ms Asanovic drew her attention to her statement dated 5th September 2008 in which she said that her father now knew about her sexuality as her mother told him but she did not know when.

417. When asked to explain the discrepancy the appellant said that maybe she was confused. It is also the case that according to Dr Bell the appellant told him that from the age of 18 until she left Albania at the age of 23 she helped her mother in her work as a seamstress, taking measurements and making deliveries. When asked about this by Ms Laing, she said it was true but when re-examined by Ms Asanovic she said that she did not help with deliveries.
418. It is also the case that in cross-examination the appellant exaggerated the way in which homosexuality was regarded in Albania, asserting that it was punishable by death or life imprisonment and asserting in effect that this was her honest opinion.
419. Moreover, there have been times when on any view, the appellant must have been under considerable stress when she made no attempt at suicide or self harm.
420. Although when Mira married, the appellant fell into a deep depression and obtained medication she made no attempt at suicide. She made no attempt at suicide or self harm after she had revealed her sexual orientation to her mother and after she had been beaten by her brother. When her claim for asylum was refused and a decision was made by the Secretary of State to remove her from the United Kingdom she made no attempt at suicide or self harm. When her appeal against that decision was dismissed she made no such attempt. At a time when on the account of Dr Bell her condition was worse than when he saw her, Dr Seear's view was only that an episode of self harm or suicide was feasible, which in our view does not amount to a real risk.
421. Dr Bell's evidence that at present there was a low risk but that it would increase to moderate or high if she were to be returned, was predicated on his view that she had been persecuted in Albania by her family and that Albania was a culture where homosexuals were targeted and she would be under serious threat. In cross examination Dr Bell conceded that the persecution he was referring to was the one episode of violence visited upon her by her brother. The finding by the immigration judge, however, was that the appellant left Albania, not because she had been persecuted for her sexuality or because she had been the subject of domestic violence but because she feared being married against her will.
422. In relation to his view that the appellant would be under serious threat as a lesbian we do not accept that this view is justified either by the objective material to which we have referred in dealing with lesbians in Albania or by the evidence as to the appellant's likely behaviour in Albania. We do not ignore the fact that it was suggested by Dr Bell that the appellant believed herself to be at a serious risk of harm but we do not share his view. The appellant has shown herself to be an intelligent person who is well read and who was astute enough to appreciate a lacuna in the evidence, which she took the initiative in filling, by her enquiry of her mother as to whether she would be allowed to return home.
423. We have considered, without listing them, the six factors set out by the Court of Appeal in J v Secretary of State for the Home Department [2005] EWCA Civ 629. In the light of the preserved finding of the immigration judge and for the reasons which we have mentioned we are not satisfied that there is a real risk that the appellant would commit suicide if returned to Albania.

424. We do, however, accept that the appellant is suffering from a depressive disorder. The source of this was clearly attributed to the inner conflict between her desire to “come out” and her feeling that it would be wrong to do so by Dr Seear. That diagnosis was confirmed by Dr Bell who said that the appellant suffered from a depressive disorder, as diagnosed by Dr Seear, of moderate intensity. His opinion was that she also suffered from anxiety disorder paranoid ideation deriving from the anxiety disorder and depressive disorder which did not suggest deterioration into a more organised psychotic disorder.
425. In his first report Dr Bell spoke of an improvement in the appellant’s condition and stated that the appellant was firmly identified as a homosexual woman, that living in Britain had resulted in her feeling truly herself in that she could be in possession of her entire identity and that she had adapted to fully being able to express her sexual identity. We find it difficult to accept that the appellant can properly be said, as Dr Bell also stated in his first report, to have identified with the homosexual community on account of two visits per month to a public house frequented by lesbian women, where she meets two gay friends with neither of whom she has a lesbian relationship. It seems to us that the very limited involvement by the appellant in the homosexual community and the fact that she has not engaged in any lesbian relationship since she has been in the United Kingdom may demonstrate some ambivalence in her position arising from a continuing inner conflict.
426. In relation to the appellant’s paranoid ideation, in cross examination Dr Bell agreed that the fact that the appellant was anxious about her immigration status might contribute to feelings of being followed in the street and said it was not possible to disentangle that aspect of the case.
427. The real issue for us to decide, therefore, is whether on account of not being able to return to her parents’ home and because of her psychological condition the appellant would be unable to fend for herself adequately in Albania so as to lead to a situation where she would suffer serious harm. Ms Asanovic suggested that the appellant’s home should be regarded as the appellant’s own home area of Albania, so that if she were not able to return there the issue of internal re-location was raised, so that we would need to consider the issue of the appellant living elsewhere on the basis of whether it would be unduly harsh to expect her to do so, in accordance with the considerations set out in the decision of the House of Lords in Secretary of State for the Home department v AH (Sudan) & Ors [2007] UKHL 49, in which the decision of the House in Januzi v Secretary of State for the Home Department [2006] 2 AC 426, was adopted and explained. We do not think that it can be right, however, to equate the appellant’s family relationships in her former family home, with her own home area of Albania. Ms Asanovic produced no authority to this effect and in the absence of any authority to the contrary, we regard the appellant’s own home area of Albania as Tirana.
428. We bear in mind that Dr Bell’s opinion that there would be a spiralling deterioration in the appellant’s condition, but that, in part, was predicated on the basis that the appellant would be under serious threat, which we find not to be the case.

429. We also bear in mind that although the appellant was able to obtain and take medication in Albania, without paying for it or having to pay a bribe to obtain it, there is no evidence that she has required medication or any other form of treatment in the United Kingdom during the two years or so that she has been here.
430. In relation to the availability of treatment for the mentally ill in Tirana, it is apparent from the report of Mr Bicaku that in Tirana Alternativa is able to offer rehabilitation care, educational training and occupation therapy on an out-patient basis. It is also the case that medicine and counselling is available on an out patient basis in Community Centres in Tirana where multi-disciplinary teams operate.
431. In paragraph 37 of his report Mr Bicaku stated that community centres had a degree of flexibility in frequency of contact and counselling which in exceptional circumstances could be up to twice a week. Moreover, while Mr Bicaku stated that the psychological text book used by the psychology branch of the faculty of Social Sciences up to 2004 described homosexuality as a mental disorder, the text book in use thereafter described it as an issue of individual preference which had to do with personal identity. It can be deduced from his report, that only the older generation of practitioners aged 50 or over would view homosexuality as a mental and hormonal disorder.
432. It is significant in our view that Dr Bell's prognosis did not require the appellant to be treated in a psychiatric hospital where the conditions the appellant would be likely to encounter might be described as likely to amount to degrading treatment.
433. We take the view that there exists the likelihood of the appellant of obtaining employment. We notice for example that in the "Telegazeta" of 26th September 2008 there was an advertisement for a seamstress with or without experience. Helping her mother with measurements and just being around her mother while she carried on the work of a seamstress would have given the appellant some aptitude for such employment. We are satisfied that there are other possibilities for employment as a cleaner and waitress which do not require previous experience, without having to use family connections.
434. We take the view that in all the circumstances there would not be a real risk that the appellant would become so destitute as to be forced to live in intolerable and inhuman conditions, which would amount to a breach of her rights under article 3 of the ECHR.
435. We have considered the risk of the appellant being trafficked for the purposes of prostitution. She clearly does not fall into the category of women, such as university students, for whom prostitution might be regarded favourably as a way of economic advancement, since as a lesbian she very likely regards the idea of sex with men as abhorrent. Therefore the risk to be considered is of being trafficked against her will. Just as she has passed the optimum age for marriage, so has she past the optimum age for trafficking. She is an intelligent woman who would be alive to the risks involved in responding to advertisements which offered unrealistically high levels of remuneration. We are not satisfied that any risk that there might be in her case would be a real risk.

436. So far as the appellant's grounds of appeal under article 8 of the ECHR are concerned in his opinion in EM (Lebanon) v Secretary of State for the Home Department [2008] UKHL 64 Lord Hope referred to the decisions of the Strasbourg court in three cases, N v United Kingdom [2008] ECHR 453, F v United Kingdom [2004] ECHR 723 and Z and T v United Kingdom (unreported). He said that N was a case about article 3, not one of the qualified Convention rights. Even in such a case, where there was a very real risk that the harm that would result from the applicant's expulsion to the inferior system of health care in her country of origin would reach the severity of treatment prescribed by that article, the court held that, other than in very exceptional cases, there was no obligation under the Convention to allow her to remain here. In paragraph 13 of his opinion he said this:

"Running through these three recent cases is a recognition by the Strasbourg court that, while the Contracting States are obliged to protect those from other jurisdictions who can show that for whatever reason they will suffer persecution or are at real risk of death or serious ill-treatment or will face arbitrary detention or a flagrant denial of a fair trial in the receiving country, limits must be set on the extent to which they can be held responsible outside the areas that are prescribed by articles 2 and 3 and by the fundamental right under article 6 to a fair trial. Those limits must be seen against the background of the general principle of international law that states have the right to control the entry, residence and expulsion of aliens. In *N v United Kingdom* a distinction was drawn between civil and political rights on the one hand and rights of a social or economic nature on the other. Despite its fundamental importance in the Convention system, article 3 does not have the effect of requiring a Contracting State to guarantee free and unlimited health care to all aliens who are without a right to stay within its jurisdiction. In *F v United Kingdom*, an article 8 case, a distinction of a different kind was drawn. On the one hand there are those guarantees which, as they are of fundamental importance, must always be rendered effective in practice. On the other there are the qualified rights of a civil or political nature which, on a purely pragmatic basis, the Contracting States cannot be required to guarantee for the rest of the world outside the umbrella of the Convention."

437. In paragraph 35 of his opinion Lord Bingham said:

"In adopting and endorsing the test formulated by the AIT in *Devaseelan* I did not in para 24 of my opinion in *Ullah* [2004] 2 AC 323 understand that tribunal to be distinguishing a "flagrant denial or gross violation" of a right from a complete denial or nullification of it but rather to be assimilating those expressions. This was how the point had been put to the House by the Attorney General for the Secretary of State, as is evidenced from the report of his argument (p 337D):

"If other articles can be engaged the threshold test will require a flagrant breach of the relevant right, such as will completely deny or nullify the right in the destination country: see *Devaseelan v Secretary of State for the Home Department* [2003] Imm AR 1. A serious or discriminatory interference with the right protected would be insufficient."

It is difficult, with respect, to see how the point could be put more clearly, and any attempt at paraphrase runs the risk of causing confusion."

438. Applying this test we are not satisfied, for the same reasons which apply to her article 3 grounds of appeal, that if the appellant were returned to Albania there would be a

flagrant breach of her right to respect for her moral and physical integrity under article 8 of the ECHR.

439. The immigration judge made a material error of law in her determination of the appeal which therefore cannot stand. We substitute a decision dismissing the appellant's appeal on asylum grounds, on humanitarian protection grounds and on human rights grounds under articles 3 and 8 of ECHR.

Signed

Senior Immigration Judge Spencer
Senior Immigration Judge Goldstein

Annex A

REASONS FOR THE DECISION THAT THERE IS AN ERROR OF LAW IN THE DETERMINATION

1. The Respondent sought and was granted an order for the reconsideration of the determination of Immigration Judge Grant-Duprez who, sitting at Taylor House on 25 May 2006, dismissed the appeal of the Appellant, a citizen of Albania, on asylum grounds but allowed her appeal on human rights grounds.
2. Senior Immigration Judge Mather in ordering reconsideration considered that the Respondent's grounds disclosed that the Immigration Judge may have made errors of law for the arguable reasons given in the application.
3. The Tribunal was subsequently served with the Appellant's Reply dated 24 July 2006 submitting that the Immigration Judge should have allowed the Appellant's asylum appeal.
4. The issue for the Tribunal was whether the Immigration Judge made a material error of law, that being an error of law that affected her decision on the appeal.
5. It was the basis of the Appellant's claim to asylum that she was a lesbian and likely to be persecuted for this reason if returned to Albania.
6. The Appellant's account was summarised by the Immigration Judge at paragraphs 8, 9 and 10 of her determination as follows:

“The basis of the Appellant's claim to asylum is that she is as lesbian and that she is likely to be persecuted for this reason if she is returned to Albania. Her evidence in her SEF form, Interview notes and her statements of 21.3.06 and 11.5.06 as supplemented by oral evidence can be summarised as follows:

8. The Appellant comes from Tirana, Albania. Her father is alcoholic and used to beat his family when drunk. Domestic violence is very common and the police do not get involved. After the Appellant left school, she stayed at home. She never worked. Her family tried to arrange a marriage for her, but she refused two suitors. She had realised at 16 that she was lesbian. She could not tell her family because it was a social taboo. When she was 20, she started a relationship with someone called Mira whom she had met when visiting her uncle. No-one suspected them. However, in January 2005 Mira's family arranged a marriage for her because she was already 25. She did not resist. Mira started to avoid the Appellant as she had to get on with her new life. After Mira's marriage, the Appellant was pressurised to get married also. She was depressed and started to put on weight. She made enquiries about leaving Albania and decided to come to the UK because she had a friend called Esmeralda here. She had a big row with her mother in September 2005 and told her the truth. Her mother was horrified and told her brother, who beat her up. She realised that she would have to leave to avoid being married off at the first opportunity. She says her family would have considered killing her to preserve their honour. Esmeralda sent her an invitation and some money and the Appellant

obtained a visitor visa. She left the house on some excuse and flew to the UK on 9.2.06. She telephoned her family when she arrived but her mother said she was dead to them. She cannot return to Albania, because it is culturally unacceptable to be lesbian and she has been disowned by her family.

9. In interview, the Appellant said that she thought she was lesbian because her father had beaten her as a child and she hated men. She said it was illegal to be homosexual in Albania and the penalty was death or life imprisonment. However she also said that the authorities don't care if people are homosexual as they are just not interested. She had decided to associate herself with lesbians because her father was alcoholic and ill-treated her and her mother (Q15). She had been beaten up three or four times by her father because she was gay (Q21-27). She had been treated by a Doctor for depression in early 2005 and again in December. She told him she was being mistreated by her father and he advised her to seek help. Her lesbian relationship had lasted three years and she had lived with her partner for that time (Q66). People had known she was gay because she had a girlfriend who lived near her uncle (Q81). They would know by the way she communicated with them (Q85). She described three suicide attempts at Q92. Firstly, she had taken an overdose, then tried to cut her wrists and then tried to hang herself. Her mother had found her with her wrists cut and saved her. She gives a detailed description of her hanging attempt at Q100 but her mother had arrived in time. None of the suicide attempts appear in the original statement.
10. In her supplementary statement of 11.5.06, the Appellant admits that most of her interview account is untrue. There was only one suicide attempt, which she had not mentioned in her first statement because she was ashamed. She had been misunderstood and had been explaining things which went through her mind. Her father had not beaten her at all because of her lesbianism and she had not sought medical advice for that reason. She had been very confused and nervous at interview."

7. The Immigration Judge continued over paragraphs 11 and 12 as follows:

- "11. In evidence, it was pointed out to the Appellant that she had continued to live with her family for some weeks after confessing to her mother and had come to no harm. She said that would have forced her to marry or killed her. It was difficult to leave and find somewhere else to go. Tirana was a small town. Life was much better and easier in the UK and safer for lone gay women. Under cross-examination she said there was only one suicide attempt but it was the hanging which she tried and not the wrists. She had been aware that there were gay associations in Albania, but she had not tried to contact them. As to shelters for domestic violence, they would be very difficult to find and her family would probably find her. She would be forced to return to her family for lack of resources. Eventually they would find her. She could 'maybe' find a job.
12. A medico-psychological report from Mr M Seear is submitted in evidence. He describes the Appellant as showing acute shame. His opinion is that the Appellant is suffering a Major Depressive Episode and that return would be likely to exacerbate this".

8. The Immigration Judge proceeded to consider the background material. In that regard at paragraphs 14 and 15 of her determination the Immigration Judge noted inter alia that violence against women especially spousal abuse remained a serious problem and was culturally accepted. Further:

“Many men, especially those from the north-east still follow the traditional code – the Kanun – dating from medieval times. They regard women as chattels... However, the Family Code, in force since 2003 provides for the protection of female victims of domestic violence and it is possible for domestic violence to be prosecuted under general assault laws. There are said to be NGOs which offer counselling and aid to abused women. Women are not excluded by law or in practice from any occupation or higher education but are often discriminated against in their careers”.

9. The Immigration Judge noted that since the return of democracy to Albania blood feuds had reappeared, especially in the north of Albania. These were part of the Kanun. There had been several thousand honour/vengeance killings since 1991 although the killing of women was prohibited by the code.
10. The Immigration Judge turned to her consideration of an expert’s report provided by Mr Alex Standish who was described as an academic specialising in Balkan studies and specifically the Kanun in Albania. He had lived in Albania while working as an economic consultant. The Immigration Judge summarised Mr Standish’s conclusions as follows:

“He goes so far as to say that it would be extremely unlikely that an unmarried female would be able to live an independent life in Albania. A woman is expected to marry around the age of 20 and those perceived to have dishonoured their families face significant risk of violence and even murder. He says there is an almost total lack of social mobility for women in practice. A single woman cannot simply relocate to another area and set up home. Renting property would be almost impossible because she would be assumed to be not respectable. Owing to social pressures, he says that a respectable employer would not entertain the idea of employing her and the most likely outcome would be destitution on the streets for a woman who had been expelled from her family home”.

11. In considering the report of Mr Seear and his description of the Appellant's physical and mental symptoms of conflict and shame, the Immigration Judge stated that she accepted the Appellant was lesbian. The Immigration Judge continued:

“In light of the objective evidence as to attitudes in Albanian society, I accept that it is likely that (the Appellant) has been disowned by her family. In her interview the Appellant gave detailed accounts of incidents which she later admitted were fabrications, or what she had been imagining. I think she is clearly a disturbed young woman, but in view of her many inconsistencies, I must treat the details of her evidence with caution. In particular, I discount her alleged suicide attempts, which were not mentioned at all in her first statement.”

12. The Immigration Judge continued:

“20. The core of the Appellant's case is that she had a secret three year relationship with a woman called Mira, that she confessed this to her mother who was horrified and that she left Albania to avoid being married off. I find that she did not live with Mira for this period (as she originally claimed but then retracted). I find indeed that no-one knew of or suspected this relationship at the time, which was conducted discreetly and secretly. I find that **the only people who know of her sexuality are highly unlikely to have told anyone else**. I find therefore that if the Appellant returns she would not be persecuted for her sexuality, as no-one

would know about it. It is not an illegal activity. She has conducted herself discreetly in the past and there is no reason to think that she would behave differently in future". (The typed emphasis is mine – see post).

13. The Immigration Judge continued:

"21. As far as her fear of violence is concerned, I accept there is a reasonable likelihood that her brother beat her when he first found out about the relationship with Mira. However she did not suffer *'three or four'* beatings from her father because of this. She retracted this claim and it appears after all that her father was not informed of her sexuality before she left. She remained living at home for several weeks after this without being assaulted or disowned. There is no suggestion that she has ever been threatened with death for dishonouring her family. Indeed, she had decided to leave for the UK before she told her mother what the problem was and before her brother beat her (Q46 ff). My conclusion therefore is that when she decided to leave Albania, the Appellant did so, not because she had been persecuted for her sexuality or because she had been the subject of domestic violence, but because she feared being married against her will."

14. In considering the relevant case law the Immigration Judge had before her Country Guidance decisions of the Tribunal in **IM (Albania) CG [2003] UKIAT 00067** and **DM Albania CG [2004] UKIAT 00059**. It was noted that **IM** found no evidence to support a reasonable likelihood that homosexuals in Albania were subject to persecution and that **DM** established that women were not a particular social group in Albania.

15. The Appellant's Counsel submitted that **IM** related to male homosexuals and that in any event the Tribunal had not had the benefit of Mr Standish's report. The Appellant would be obliged to hide her sexuality which would be a denial of her nature. It was submitted before the Immigration Judge that lesbians were a particular social group in Albania suffering discrimination and lack of protection.

16. The Immigration Judge found that she could distinguish the case of **DM** from that of **Shah and Islam [1999] IAR 283**, on the basis "*that there was not any active undermining of the position of women by the provisions of the law in Albania and therefore women were not a social group for Refugee Convention purposes*".

17. The Immigration Judge concluded that the problem faced by the Appellant "*seems to be a social and cultural problem rather than persecution or discrimination by the State*".

18. The Immigration Judge in considering the Appellant's human rights appeal accepted:

"...that if the Appellant were to be forced into a marriage against her will, that would amount to inhuman and degrading treatment. However, I have to consider whether this would actually occur. Apart from the culture, in particular those who follow the Kanun tradition, I find no guidance in the Country Report as to whether fathers have an legal right to force a marriage on a girl. The social pressures would no doubt be enormous for someone living at home and wishing to maintain a relationship with her family, but in the case of the Appellant who has already broken with her family, the risk of actually being forced into a marriage must be quite small. In theory any occupation or higher education is open to women and therefore there is no legal bar to a woman making her

own way in the world. The Appellant's family would be unaware that she had returned. There would be no-one to force her. There are women's groups to which she could turn for help".

19. In further referring to the report of Mr Standish the Immigration Judge expressed her concern as to "*the extent of the social prejudice*" described by him in his report. The Immigration Judge continued:

"It does seem almost incredible that a single woman would be unable to rent a room or get a job because of prejudice, and that therefore the most likely outcome for a single woman would be destitution on the streets. However, this is what he says at paras 43, 82 and 83. If true, it means that no woman can exist in Albania outside her family group (even though she may not be actively persecuted) and therefore she cannot relocate to avoid any problems she may have had. This would certainly breach her right to physical and moral integrity under Article 8 and would make the means to a normal life impossible. On the face of it, it seems absurd that someone should be entitled to sanctuary in another country because they have fallen out with their family. However, Mr Standish appears to be well qualified to make his report and I feel I am obliged to accept his advice. The circumstances of this Appellant are truly exceptional in the light of what Mr Standish identifies as the consequences of (the Appellant's) return to Albania as a single woman abandoned by her family. The House of Lords reaffirmed in Januzi and others [2006] UKHL 5 that an asylum seeker cannot be expected to relocate to a place within his own country where the quality of life does not meet the basic norms of civil, political and socio-economic human rights. The same principle must apply to someone who does not qualify as a refugee but nevertheless faces the absence of such basic norms. It would be wholly disproportionate to return her to a life of destitution. I therefore find that to return (the Appellant) in these circumstances would place the UK in breach of its international obligations under Article 8 ECHR".

20. The Appellant's challenge to the findings of the Immigration Judge was predicated on the claim that the Immigration Judge failed to give proper weight to the fact that the Appellant was a lesbian. The Appellant's grounds maintained that as a consequence, there flowed failures to:

- Properly identify the fact that the Appellant had demonstrated the Refugee Convention reason of particular social group resulting from and further exemplified by the persecutory treatment that she suffered from her family and the police;
- The risk of societal ostracism, exclusion and attack and;
- An insufficiency of protection available to her in Albania and/or an inability to safely relocate within the country.
- On the same basis, the Immigration Judge should also have allowed the Appellant's appeal under Article 3 of the ECHR and;
- The failure to give proper weight to the fact that the Appellant was a lesbian resulted in failures to properly identify the nature of risk to her and the nature of her likely treatment on return to Albania.

21. In relation to the Immigration Judge's findings under the Refugee Convention, it was contended that it was an error of law for her to conclude as she did at paragraph 21, that the Appellant's departure was unrelated to her being persecuted because of her sexual orientation but solely because she feared the arranged marriage. Once accepted that the Appellant was a lesbian, her flight from treatment that was caused

by her sexual orientation was inseparable from why that treatment took place and what effect it had on a person of such characteristics.

22. Further, the Immigration Judge had examined the separate issues of membership of a social group, the issue of persecution and the issue of sufficiently of protection in that order to ascertain whether or not there was persecution for a Refugee Convention reason. In that regard it was said that the Immigration Judge's reasoning at paragraph 22 disclosed a confusion of those issues, first flowing from a failure to properly determine the issue of social group. The Appellant's grounds maintain that on the issue of social group the following questions should have been addressed:
 - “1. Was the Appellant a member of a social group as a result of sexual orientation, alternatively;
 2. Was the Appellant a member of a social group by virtue of being a woman;
 3. Was the Appellant a member of a social group as a result of her having refused a forced marriage?
23. It was contended that the Immigration Judge failed to examine the first of those issues and that her consideration of the remaining above mentioned issues were thus confused.
24. The Respondent's challenge was predicated on a claim that the Immigration Judge had failed to explain why she believed that the Appellant's Article 8 rights would be breached if returned to Albania. In allowing the appeal on human rights grounds, the Immigration Judge erred in effectively concluding that Mr Standish's report was proof enough to show that the Appellant would be destitute if returned. For the Immigration Judge to attach weight to this assertion from Mr Standish there was a failure to give clear and detailed reasons. The Immigration Judge failed to address this issue in the context of the high threshold necessary to breach Article 8. Inadequate reasons had been given as to why the Immigration Judge attached such weight to Mr Standish's report.
25. On the Respondent's reading of the determination it appeared that the Immigration Judge's only reason for attaching such weight to the report was because of Mr Standish's qualifications and the Immigration Judge failed to provide any further rationale behind her decision to allow the case on Article 8.
26. The Respondent's grounds cited the decision of the Tribunal in BK **[2004] UKIAT 00156 (Serbia and Montenegro) CG** that explicitly dealt with reports from Mr Standish and the reliance that should be placed upon them. Although that case concerned a Kosovan blood feud the principles remained the same. It was a decision where the Tribunal concluded that *“the Adjudicator's unexplained preference for Mr Standish's report over the other objective evidence ... is unsustainable on the evidence”*. The Appellant had herself broken contact with her family. She was an independent adult who had come to the United Kingdom of her own accord. The fact that Mr Standish had written the report to suggest the Appellant would be destitute on return was not upheld by any references to objective evidence or case law and was based merely upon his own opinion. It was therefore deemed unsafe for the

Immigration Judge to allow the appeal on the basis of the report in view of her concerns with Mr Standish's conclusions.

27. In that regard, the Respondent had in mind paragraph 23 of the Immigration Judge's determination where she had expressed concern as to the extent of the social prejudice described by Mr Standish in his report.
28. The Respondent's grounds further contended that the Immigration Judge had in any event, failed to establish why social prejudice would lead to total destitution and thus breach the Appellant's Article 8 rights. The Immigration Judge had failed to give adequately sound reasons for concluding that the Appellant's circumstances were exceptional.
29. In particular the Immigration Judge failed to consider the guidelines as laid out in **Razgar [2004] UKHL 27**.
30. The Respondent's grounds concluded that in order to succeed with the claim that the Appellant faced destitution on return to Albania it was necessary to demonstrate that it was made out by clear evidence explained and developed in detail and this had not been done in this case.
31. The Respondent contended that the Appellant's circumstances did not have any of the exceptionally compelling and compassionate features that would be necessary to show that her removal would be disproportionate to the proper course of enforcing immigration control.
32. At the outset of the hearing before me, I drew to the parties' attention the following cases:

Fornah [2006] UKHL 46; and

J [2006] EWCA Civ 1238
33. In Fornah it was held that "the family was the archetypal social group and where one member of a family was persecuted albeit not for a '*Convention reason*' persecution meted out because of him or her to other members of his/her family might be '*for reasons of ... membership of a particular social group*'. The Court of Appeal in Quijano was wrong to hold otherwise. However, where some members of the family face persecution and not others the issue of causation would need to be closely scrutinised." In Fornah their Lordships had referred to the definition in Article 10(d) of the European Union Council Directive 2004/83/EC that a group was to be considered to form a particular social group where, in particular;
 - (i) Its members shared an innate characteristic, or a common background that could not be changed or shared, a characteristic so fundamental to identity or conscience that a person should not be forced to renounce it and
 - (ii) That group had a distinct identity in the relevant country because it was perceived as being different by the surrounding society".

34. Their Lordships continued that read literally that was not inconsistent with the trend of international authority; a particular social group would be established where (i) and (ii) were both satisfied. But if both (i) and (ii) had to be satisfied the test was more stringent than was warranted by international authority. The UNHCR, *Comments on the Directive* adhered to its view that the criteria (i) and (ii) were alternatives, providing recognition of a particular social group where either criterion was met and not requiring both to be so.
35. In J it was held that in determining whether an asylum seeker faced persecution as a member of a particular social group in his own country, that he had hitherto avoided persecution by modifying his behaviour so as to disguise his membership of that group did not necessarily mean that he could be expected to avoid the risk in future by continuing to modify his behaviour. The question was not whether the Appellant could live in his own country without attracting adverse attention, but what was likely to happen if he returned. To say that he was likely to live discreetly as a homosexual was not the same as expecting him/her to live discreetly.
36. In fact, Ms Asanovic for the Appellant was ready with a transcript of the decision in Fornah, whilst Ms Kiss provided me with a bundle of case law that included the decision in J as well as the earlier Country Guidance decisions in Albania to which I have earlier referred.
37. I was informed by the parties and indeed agreed with them, that in the circumstances the Immigration Judge's conclusion at paragraph 20 of her determination that if the Appellant conducted herself and her sexuality with discretion upon return to Albania she would not be at risk on return, was a material error of law.
38. Ms Kiss indeed argued that the Immigration Judge's Article 8 ECHR findings were almost exclusively based upon what Ms Kiss submitted were no more than the opinions of Mr Standish that were hardly if at all sourced by relevant background material and without any apparent consideration of the 5 questions posed in Razgar.
39. Ms Asanovic submitted that the material error of law identified in the Immigration Judge's reasoning of the Appellant's asylum appeal could not possibly be isolated from her failure to adequately consider, if at all, whether or not the Appellant engaged Article 3 of the ECHR.
40. I agreed with the parties and for like reasons that the Immigration Judge had materially erred in law and that there should thus be a second-stage reconsideration of the appeal on all issues at large.
41. Ms Asanovic accepted that the adverse credibility findings of the Immigration Judge had not been challenged in the Appellant's Reply. By the same token, Ms Kiss confirmed to me that the Respondent raised no challenge to the Immigration Judge's positive credibility findings.
42. However, the Immigration Judge after finding at paragraph 20 that the only people who would know of the Appellant's sexuality were Mira, her mother and brother, and possibly her father, had continued: "*These people are highly unlikely to have told anyone else*". I agreed with the parties that this sentence within paragraph 20 of the

Immigration Judge's findings should not be preserved. It was no more than an expression of speculation on the part of the Immigration Judge. I agreed that in all other respects, both the positive and negative credibility findings of the Immigration Judge should be preserved.

43. I shared the concern of the parties, that the Immigration Judge's task had not been made any easier by the fact that she had to rely on arguably outdated Country Guidance decisions in **IM** promulgated in September 2003 and **DM** promulgated on 1 April 2004. The issue of whether there was a sufficiency of protection in Albania in particular to single women and to homosexuals and as to whether they constituted a particular social group in Albania was a matter that arguably needed revisiting and updating. Of particular concern was the issue as to whether lesbians in Albania formed a particular social group and whether or not a sufficiency of protection was available to them. This was a discrete issue that did not appear to have been addressed in either **IM** or **DM**.
44. I therefore informed the parties that I would refer the matter to Senior Immigration Judge Gleeson the appropriate Country Group Convenor to consider whether this matter was appropriate for Country Guidance and if so as to the terms of reference and as regards further listing.
45. Ms Kiss for the Respondent informed me that she would wish to consult her Country Information Unit should Senior Immigration Judge Gleeson consider this appeal for possible Country Guidance and in terms of whether or not the Respondent would intend to instruct their own country expert for the purposes of a report and possibly to give oral evidence. In any event a decision would not be made in this regard unless and until the Respondent had the opportunity to consider any updated country expert report served upon them by those representing the Appellant.
46. I was informed by Ms Asanovic that the Appellant's solicitors intended to instruct Dr Stephanie Schwandner-Sievers for the purposes of a country expert report. Ms Asanovic described Dr Schwandner-Sievers as an "*Albanialyst*" and an Associate Fellow of the School of Slavonic and East European Studies at University College. In addition an updated report from Mr Standish was to be obtained.
47. Ms Asanovic further informed me that there was likely to be an attempt to contact what she described as two specialists from the ILGA (International Gay and Lesbian Association) to provide reports and possibly give oral evidence.
48. The Appellant would intend to give oral evidence for which purpose an Albanian interpreter would be required. I informed the parties that in the circumstances they would be advised in due course by the Tribunal, as to whether this case was to be listed initially For Mention Only.
49. I informed the parties that in the circumstances they would be advised in due course by the Tribunal, as to whether this case was to be listed initially For Mention Only."

Annex B

In determining this appeal we have had regard to:

- the oral evidence of the appellant,
- the oral evidence of Ms Stephanie Schwandner-Sievers MA, honorary research affiliate at the Centre for South Eastern-European Studies of the School of Slavonic and East European Studies at University College in London and a visiting professor at the University of Bologna,
- the oral evidence of Dr Nicola Mai PhD research fellow in migrations and immigrations at the Institute for the Study of European Transformations of the London Metropolitan University
- the oral evidence of Dr D L Bell, BSc MB MRCP FRC Psych, a consultant psychiatrist,
- the appellant's asylum statement dated 21st March 2006,
- a supplementary witness statement from the appellant dated 11th May 2006,
- a second supplementary statement from the appellant dated 19th May 2008,
- a third supplementary statement from the appellant dated 5th September 2008,
- a psychiatric report from Dr Bell which was unsigned and undated but which Dr Bell subsequently indicated was signed in August 2008,
- a supplementary report from Dr Bell dated 9 September 2007,
- a report from Dr Mai dated 28th April 2008,
- a report from Ms Schwandner-Sievers dated 6 May 2008,
- a report from Mr Alex Standish dated 14th May 2006,
- a skeleton argument dated 10th September 2008
- an appellant's notice under rule 32,
- an appellant's notice under rule 14,
- the appellant's schedule of essential paragraphs in the experts' reports,
- items of background material and copies of various authorities,
- a list of essential reading passages,
- further background material,

- a supplementary statement from Ms Schwandner-Sievers dated 21st September 2008,
- a further schedule of essential paragraphs,
- a report on the appellant by Mr NK dated 20th September 2008 and appendices,
- a report from Mr Adratik Bicaku dated 23rd November 2008,
- a statement from the appellant dated 26th November 2008,
- a further report from Ms Schwandner-Sievers dated 22nd November 2008 and attachment,
- a schedule of essential paragraphs in Ms Schwandner-Sievers's further report dated 22nd November 2008,
- a skeleton argument in response to the skeleton argument submitted on behalf of the respondent dated 24th September 2008,
- the Home Office bundle in which there is to be found the notice of appeal and the report of Dr Michael Seear, dated 7th March 2006,
- a bundle of objective material submitted on behalf of the respondent,
- a skeleton argument on behalf of the respondent dated 16th September 2008,
- translated copies of Albanian newspapers,
- the written closing submissions made on behalf of both parties and
- the authorities mentioned in this determination.

Annex C

In his first report Dr Mai said that although his work addressed social change in post-communist Albania in general, such interest focused on the relation between the emergence of new youth and gender identities and roles, migration and the justification of violence and criminality. He had a good and updated knowledge of the condition of homosexual people in Albania in many different respects.

From July 1993 to January 2000 he worked in Albania as the director of a development project aimed at setting up a network of youth centres as a way to foster the process of democratisation in Albania, which was based in Tirana, Berat, Gjirokastër and Durrës. The Italian association he used to work for while in Albania, ARCI, was part of a wider network of Italian cultural and political associations among which was also Italy's main gay and lesbian association, ARCIGAY.

Their Albanian partner association was the Albanian Youth Council, a network of different Albanian NGOs, amongst which was ALGA (Albanian Lesbian and Gay Association) which was still operating away from public visibility and in conditions of the utmost secrecy, in order to avoid suffering abuse by both police officers and homophobic groups or individuals. He had also cooperated with the members of ALGA in the development and carrying out of activities in the preparation of two projects, which were submitted to international donors present in Albania. He had known most of the members of ALGA as both colleagues and friends and their professional and personal relations enabled him to understand the condition of Albanian homosexual people in depth. Since his last visit to Albania in December 2006 he had been in touch with members of ALGA and AHRG (the Albanian Human Rights Group) on a regular basis.

From July 2001 to July 2003 he was involved in two parallel research projects on the conditions of social inclusion and exclusion experienced by Albanian migrants living in Italy, Greece and in the United Kingdom, which projects were based at the University of Sussex in Brighton. In 2003 and 2004 he undertook research exploring the relations between Albanian and Romanian cultural constructions of masculinity, sex work and the risk of HIV/AIDS diffusion both at home and among migrants. From January to December 2004 he was the main researcher for the European Network on Male Prostitution underlying the findings of a pilot survey undertaken by the network and aimed at understanding the migratory patterns and conditions and socio-economic vulnerability of male sex workers. In 2005 and 2006 he was the principal investigator within a research project funded by the French region BACA, exploring the relation between male prostitution and the mobility of young people and unaccompanied minors from the Balkans and North Africa, including Albania. Between 2006 and 2007 he was the principal investigator of a project funded by the Save the Children Italy on young migrants involved in criminal behaviour. Before undertaking that research he contacted and got to know many Albanian gay people and activists and he became even more aware of the discrimination, marginalisation and abuse they were subject to in Albania. In September 2006 he was invited to participate in a round table "Making Prevention of Trafficking in Human Beings Effective: Building Regional and Local Capacity of Roma Communities" organised by the Contact Point for Roma Issues and the Anti-Trafficking Programme of the OSCE Office for Democratic Institutions and Human Rights, in cooperation with the OSCE presence in Albania. Although this was his last visit to Albania he had befriended Albanian gay people living in London and was in regular contact with gay activists and friends living in Albania.

Annex D

LIST OF BACKGROUND MATERIAL BEFORE THE TRIBUNAL

1. Undated * *Report on State Violence in Albania*
2. Undated * *GISH Albania: Research and opinions on the Albanian situation in relation to LBGT rights*
3. Undated * *GISH: Report on the arrest of Mr Nasser Almalak*
4. Undated * *AHRG report: The American Embassy*
5. Undated *Regional Declaration on Cooperation between Gender Mainstreaming Instructional Mechanisms in the Western Balkan Countries, Ministry of Labour, Social Affairs & Equal Opportunities*
6. Undated *Website: Wikipedia Tirana Report*
7. Undated *Website: NGO and Government Profiles*
8. Undated *Website: Women's Organisation Albania*
9. Undated *Website: Useful to Albania Women*
10. August 2003 * *AHRG report on the arrest of a group of homosexuals: "Police actions turn to be "homophobia"*
11. 2004 *International Labour Organisation: Employment Policy Review, Albania*
12. 26 February 2004 *Law "On An Equal Gender Society"*
13. 28 February 2005 *US Department of State Country Reports: Human Rights Practices 2004*
14. 18 April 2005 * *OMCT report: State violence in Albania*
15. 2005-2006 * *Canadian Immigration Refugee Board: Country of Origin Research: Albania*
16. 2006 *US Social Security Programs throughout the World: Europe, 2006*
17. 1 February 2006 * *Ms Elsa Ballauri, Secretary Director of AHRG: Advisory Opinion*
18. March 2006 ** *Amnesty International Report: Albania: Violence against women in the family: it's not her shame*
19. 26 June 2006 * *www.stophonourkillings.com: Honour crimes in Albania*
20. 8 September 2006 *Canada Country of Origin: Responses to Information Requests*
21. 25 September 2006 *Canada Country of Origin: Responses to Information Requests*
22. 2007 *The Commission of the European Communities: Progress Report on Albania*

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| 23. | 2007 | Violence Against Women: <i>Does the Government Care in Albania?</i> |
| 24. | 3 April 2007 | UK Operational Guidance Note: <i>Albania</i> |
| 25. | 3 June 2007 ** | Sunday Telegraph: <i>Thousands fear as blood feuds sweep Albania</i> |
| 26. | August 2007 | <i>Canada Country Fact Sheet</i> |
| 27. | 1 October 2007 | Canada Country of Origin: <i>Responses to Information Requests</i> |
| 28. | 3 October 2007 ** | Summary transcript of telephone interview with representative of OSCE. |
| 29. | 25 October 2007 ** | Telephone conversation/interview with Ms Jennifer Hollinger |
| 30. | 13-14 November 2007 ** | Interview/email correspondence with Prof. Wolfgang Stoppal |
| 31. | 21 November 2007 ** | Amnesty International Report: <i>Albania: No place to call home – adult orphans and the right to housing</i> |
| 32. | 5 December 2007 * | <i>Balkan Albania's Gay Flight</i> |
| 33. | 11 March 2008 ** | US Department of State: <i>Country Reports on Human Rights Practices 2006: Albania</i> |
| 34. | May 2008 | Canada Issue Paper: <i>Albania Blood Feuds</i> |
| 35. | 9 May 2008 * | Note of interview with Mr Nasser Almalak |
| 36. | 12 May 2008 | UKBA Country of Origin Information for Key Documents: <i>Albania</i> |
| 37. | 2 June 2008 * | Note of telephone conversation with Ms Elsa Ballauri; AHRG |
| 38. | July 2008 | National Strategy on Gender Equality and against Domestic Violence, OSCE |

* appended to Dr Mai's reports

** appended to Ms Schwandner-Sievers' reports