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THE PRESUMPTION OF SAFTEY

The designation of 'Safe Countries of Origin' and its role in UK Asylum
Proceedings

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Abstract

This thesis examines the legal and procedural implications of the ‘Safe Country of Origin’ (SCO) concept in UK asylum law, focusing on the designation of Albania. It investigates to what extent the presumption of safety undermines the right to an effective asylum procedure as protected under human rights and refugee law. Through desk-based research and thematic coding of Upper Tribunal decisions involving Albanian nationals, the study interrogates how the SCO label shapes credibility assessments, procedural safeguards, and access to a fair hearing.

The research is grounded in a normative legal framework drawing from authoritative interpretative material on The Refugee Convention such as The Office of the United Nations High Commissioner for Refugees and Council of Europe documents. It further engages with recent reforms under the Nationality and Borders Act 2022 and Illegal Migration Act 2023, exploring their impact on legal standards, evidentiary thresholds, and the non-suspensive appeals process.

Albania offers a politically significant case study: its designation as a ‘safe’ country has been central to government efforts to accelerate removals and deter irregular migration. This move has drawn sharp criticism from legal experts and human rights organisations, particularly in light of concerns over trafficking, corruption, and weak protection systems for vulnerable groups. The upcoming publication of The Independent Chief Inspector of Borders and Immigration into the UK’s handling of Albanian asylum claims further underscores the urgent relevance of this research.

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List of Acronyms:

CoE	Council of Europe	SPE	Second Pair of Eyes
CPIN	Country Policy Information Note	UT	Upper Tribunal
COI	Country of Origin Information	VOT	Victim of Trafficking
DIJ	Designated Immigration Judge		
DLA	Doctrinal Legal Analysis		
ECHR	European Convention on Human Rights.		
ELA	Empirical Legal Analysis		
FtT	First-Tier Tribunal		
FtFJ	First-Tier Tribunal Judge		
HBF	Helen Bamber Foundation		
HO	Home Office		
ICIBI	The Independent Chief Inspector of Borders and Immigration		
IJ	Immigration Judge		
IMA	Illegal Migration Act 2023		
JCHR	The Joint Committee on Human Rights		
MiCLU	Migrant and Refugee Children’s Legal Unit		
NABA	Nationality and Borders Act 2022		
NIAA	Nationality, Immigration and Asylum Act 2002		
NRM	National Referral Mechanism		
PSG	Particular Social Group		
SCO	Safe Country of Origin		
SIJ	Senior Immigration Judge		
UNHCR	United Nations High Commissioner for Refugees		

Chapter 1: Introduction and Political Context

1.1 The designation of ‘Safe Countries’ in the recent political context

July 2023 marked the commencement of the ‘Illegal Migration Act’ (IMA), with the purpose ‘to prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes, by requiring the removal from the United Kingdom of certain persons who enter or arrive in the United Kingdom in breach of immigration control.’¹ This bill emerged within the context of the ‘small boats crisis’, which prompted the Conservative government’s pledge to ‘Stop the Boats’ as a key priority for 2023.² However, this was not the first bill in the post-Brexit era targeted at small boat arrivals from the English Channel. Home Secretary Priti Patel had passed the Nationality and Borders Act (NABA) in April 2022 amidst her ‘New Plan for Immigration’.³

Both pieces of legislation expanded the ‘Safe Country of Origin’ (SCO) concept. The 2022 NABA served to extend section 94 powers from the 2002 Nationality, Immigration and Asylum Act which allows the UK Home Secretary to certify certain asylum claims as ‘clearly unfounded’ if the applicant is from a country considered generally ‘safe’.⁴ Furthermore, the 2023 IMA created a blanket ban for those from SCOs under Section 59, which assumes no one from these countries is at risk of persecution or human rights breaches.⁵ This supports automatic removal by making both asylum and human rights claims automatically inadmissible. This has prompted civil society members such as the Migrant and Refugee Children’s Legal Unit (MiCLU) to petition the government to repeal section 59, stating it is ‘in direct violation of the UK’s commitments under the Refugee Convention.’⁶

Subsequently, the concept establishes the presumption of safety for applicants arriving from SCOs, limiting key procedural safeguards such as no in-country right of appeal, fast-tracked

¹Illegal Migration Act HC Bill (2023-24) [37].

² Jennifer Morgan and Lizzy Willmington, 'The Duty to Remove Asylum Seekers under the Illegal Migration Act 2023: Is the Government's Plan to "Stop the Boats" Now Doomed to Failure?' (2023) 52(4) *Common Law World Review* 1 <https://doi.org/10.1177/14737795231206156>.

³ *Ibid.*, p2.

⁴ Nationality, Immigration and Asylum Act (2002) [94].

⁵ Illegal Migration Act 2023, s 59.

⁶ Migrant & Refugee Children’s Legal Unit (MiCLU), ‘Why we are calling for the repeal of Section 59 IMA’ (MiCLU, 10 March 2025) <https://miclu.org/news/why-we-are-calling-for-the-repeal-of-section-59>.

decision making, the burden shift to disprove safety and reduced independent oversight. This is defined by the United Nations High Commissioner for Refugees (UNHCR) as the UK establishing a ‘quasi-presumption of safety’.⁷ Concerning reports from The Independent Chief Inspector of Borders and Immigration (ICIBI) found significant evidence of a government operation coined ‘BRIDORA’ with the aim to ‘expedite Albanian cases with the aim of refusing as many as possible by declaring them ‘clearly unfounded’.⁸ In accordance, it was later uncovered that ‘that ministers had set a target of approving no more than 2% of Albanian claims—indicating a deliberate effort to limit asylum rather than assess cases individually.’⁹

1.2 Anti-Albanian Rhetoric

The year 2022 saw a significant increase of Albanian nationals crossing the English Channel, making them the largest group seeking asylum in the UK.¹⁰ This large influx of Albanian asylum seekers was met by ‘narratives that portrayed Albanian forced migrants as a threat to Britain by using frames to ‘Securitize’ and ‘Criminalise’.¹¹ Emerging scholarship draws direct links from this anti-Albanian migrant rhetoric to the reaffirming of Albania’s designation as a SCO. The broad generalization and mis-categorization of Albanian arrivals as ‘as economic migrants with ties to crime’, fails to account for lived experiences of human trafficking and persecution based on protected characteristics such as sexuality.¹² This presumption was reaffirmed in the Home Affairs Select Committee which stated, ‘We should not be a harbour for those who are essentially economic migrants coming from safe countries such as Albania.’¹³

⁷ UNHCR, *The Safe Country of Origin Concept (Articles 30, 31)* (Refworld, 15 January 2010) <https://www.refworld.org/docid/4bab55ea2.html>.

⁸ ‘UK Policies on Albanian Asylum Seekers Put Trafficking Survivors at Risk, New Report Warns’ (Electronic Immigration Network, 3 April 2025) <https://www.ein.org.uk/news/uk-policies-albanian-asylum-seekers-put-trafficking-survivors-risk-new-report-warns>.

⁹ *Ibid.*

¹⁰ Anabel Rose Boakes, ‘How British tabloids’ framing of Albanian migrants fuels anti-immigrant sentiments’ (European Western Balkans, 10 October 2023) <https://europeanwesternbalkans.com/2023/10/10/how-british-tabloids-framing-of-albanian-migrants-fuels-anti-immigrant-sentiments/>.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ House of Commons Home Affairs Committee, *Asylum and Migration: Albania*, Second Report of Session 2022–23, HC 197 (12 June 2023) <https://committees.parliament.uk/publications/40291/documents/204657/default/>.

1.3 Public Criticisms and Controversies

However, the reaffirmation of Albania as a SCO was met with significant scrutiny from various human rights organizations and legal experts. In June 2023, over 40 organizations and individuals signed an open letter disputing the claim that Albania is a safe country.¹⁴ They argued that Albania faces serious issues such as corruption, human trafficking, gang-related violence, and discrimination against various communities, including LGBTQI, Roma, and Egyptian communities. The letter emphasized that these issues undermine the assertion that Albania meets the requisite standards to be classified as safe. This well-founded fear of persecution was highlighted in a highly publicized case from February 2025, *XL & SG v SSHD*, in which a lesbian couple was granted asylum on account of being victims of trafficking and in a same sex relationship.¹⁵

Furthermore, the UNHCR has voiced concerns of Albania's inclusion on the SCO list, 'despite UK published country guidance and decisions of UK courts which recognize that certain groups of Albanian citizens may be at risk of persecution.'¹⁶ The report highlights that 'the inclusion of Albania in particular on this list raises concerns inter alia about a possible breach of Article 3 of the Refugee Convention, which prohibits discrimination on the basis of nationality.'¹⁷

1.4 Legal implications

Moreover, in late 2024, legal experts at Garden Court Chambers published scholarship on the legal implications for Albania's SCO designation. By analysing Country Policy Information Notes (CPINs), Symes and Fitzsimmons argue that Home Office guidance to practitioners that *Certification* (meaning being certified as 'clearly unfounded' claims) for Albanian applicants must be considered in the first instance.¹⁸ This is then correlated with the increase of cases 'which can typically succeed before the Tribunal', with 1976 claims ending in refusal for the

¹⁴ MiCLU and others, *Open letter in support of an amendment to remove Albania from a list of 'safe countries'* (13 June 2023).

¹⁵ *XL & SG v Secretary of State for the Home Department* (UI-2024-005220 & UI-2024-005224) (Upper Tribunal, Immigration and Asylum Chamber, 26 March 2025).

¹⁶ UNHCR, *Legal Observations on the Illegal Migration Bill* (22 March 2023) <https://www.refworld.org/legal/natlegcomments/unhcr/2023/en/124244>, p.3.

¹⁷ *Ibid.*, p. 18.

¹⁸ Mark Symes and Emma Fitzsimmons, 'Albania: is it really a "safe country" for the purposes of certification?' (Garden Court Chambers, 17 September 2024) <https://gardencourtchambers.co.uk/immigration-blog-albania-is-it-really-a-safe-country-for-the-purposes-of-certification/>.

final quarter of 2023.¹⁹ However, this must not be misinterpreted as an argument wholly against SCO designation, rather that the current approach ‘risks amounting to an unspoken invitation to depart from the Country Guidelines decisions’, in favour of a generalized view of risk.²⁰ Subsequently, the legal experts constitute a wider call for a move to ‘properly individualize a client’s case against the individual risk factors’, as well as ensuring the presumption of safety does not minimize procedural safeguards afforded to all applicants.²¹

As a result, this thesis aims to follow UNHCR recommendations to ensure ‘continuous scrutiny be maintained of all countries with legislation in force permitting the designation of countries as safe countries of origin, given the potential prejudice to asylum applicants if this concept is applied unfairly or inappropriately.’²²

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² UNHCR, *The Safe Country of Origin Concept (Articles 30, 31)*, p, 13.

Chapter 2: Methodology

2.1 Research Question

To what extent does the UK's designation of Albania as a 'Safe Country of Origin' undermine the right to an effective asylum procedure under human rights and refugee law?

2.2 Albania as a Paradigm Case

This thesis examines the designation of Albania as a SCO to assess whether, and to what extent, this legal designation undermines the right to an effective asylum procedure within human rights and refugee law. By using Albania as a case study it offers a paradigm case, with the politico-salience of Albania as a test case has grown more significantly in recent times, particularly with regard to increasing asylum appeals, where Albanian nationals appeal for asylum, and being viewed by the government as abusive or improper.²³ This has prompted controversy among human rights organizations and attorneys, who argue that the blanket presumption of safety fails to address the real threats for particular groups, such as victims of slavery, women suffering gender-based violence, and LGBTQ+ individuals.²⁴ In addition, this thesis follows the release of the ICIBI asylum case work inspection in early 2024, which raised concerns of on regarding the treatment of Albanian asylum seekers, highlighting the academic relevance and the contemporaneity of this study.²⁵

Moreover, Albania has consistently been among the top nationalities claiming asylum in the UK.²⁶ Accordingly, this nationality has been subject to group refusal policies, with being

²³ Home Affairs Committee, *Asylum and Migration: Albania* (HC 580-III, Report 197, 13 July 2023) para 19 <https://publications.parliament.uk/pa/cm5803/cmselect/cmhaff/197/report.html>.

²⁴ See Mark Symes and Emma Fitzsimons, 'Albania: is it really a "safe country" for the purposes of certification?', Marsons L (Public Law Project (PLP) 2025) rep <<https://publiclawproject.org.uk/resources/punishing-the-victim-how-the-uks-broken-asylum-system-fails-the-people-it-should-protect/>>, The Helen Bamber Foundation (HBF), *Dismissing Risk: The impact on trafficking survivors of labelling countries of origin as 'safe'*, (2025) https://helenbamber.org/sites/default/files/2025-04/Dismissing%20Risk_April%202025.pdf.

²⁵ Independent Chief Inspector of Borders and Immigration, *An Inspection of Asylum Casework (June–October 2023)* (29 February 2024) https://assets.publishing.service.gov.uk/media/65e06d45f1cab36b60fc47ad/An_inspection_of_asylum_casework_June_to_October_2023.pdf.

²⁶ Home Office, *Immigration System Statistics, Year Ending September 2024: How Many People Come to the UK Irregularly?* (Official Statistics, 28 November 2024) <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2024/how-many-people-come-to-the-uk-irregularly>.

certified under section 94 means that Albanian asylum claims are presumed to be ‘clearly unfounded’ and processed under fast-track procedures with reduced procedural safeguards, including non-suspensive appeal rights. Therefore, Albania is a paradigm in how migration control priorities can conflict with refugee protection standards, providing a focal point through which to critically analyse the impact of its presumption of safety on access to justice and fair decision-making, respectively, in asylum hearings. By focusing on Albania, one can anchor and critically examine how the SCO designation operates in reality, and how it might be in conflict with the UK's obligations under the Refugee Convention.

2.3 Methodology

While establishing a methodology for this thesis, it became evident that the designation of SCOs exists not in a vacuum but within a politicized context, as argued by Vogelaar and Castello.²⁷ This is not to say the designation of SCOs is baseless, rather than to consider the concept of labelling a country ‘safe’ purely within the confines of Doctrinal Legal Analysis (DLA), is to exclude the aspects that do not purely engage with doctrine.²⁸ Specially, the research question requires engagement with discourse and identifying recurring patterns in judicial reasoning on how “risk,” “safety,” or “credibility” are framed within the presumption of safety.

Therefore, the research question calls for a Socio-legal approach. Indeed, there has been emerging literature on the efficacy of methodologies that use complimentary empirical legal study approaches. Rather, scholars such as Olsen *et al* argue that quantitative methods ‘ensure the reproducibility, generalizability, and empirical validity’ of traditional legal studies.²⁹ In fact, it's increasingly common in studies that aim to go beyond the ‘black letter’ legal doctrine and instead explore how law works in practice, including how judgments reflect narratives,

²⁷ Femke Vogelaar, ‘The Presumption of Safety Tested: The Use of Country of Origin Information in the National Designation of Safe Countries of Origin’ (2021) 40(1) *Refugee Survey Quarterly* 106 <https://doi.org/10.1093/rsq/hdaa030>,

²⁷ Cathryn Costello, ‘Safe Country? Says Who?’ (2016) 28(4) *International Journal of Refugee Law* 601 <https://doi.org/10.1093/ijrl/eev042>.

²⁸ Gareth Davies, ‘The Relationship between Empirical Legal Studies and Doctrinal Legal Research’ (2020) 13 *Erasmus Law Review* 93 <https://www.boomportaal.nl/tijdschrift/ELR/ELR-D-19-00032>.

²⁹ U Šadl and HP Olsen, ‘Can Quantitative Methods Complement Doctrinal Legal Studies? Using Citation Network and Corpus Linguistic Analysis to Understand International Courts’ (2017) 30 *Leiden Journal of International Law* 327 <https://doi.org/10.1017/S0922156517000085>.

assumptions, and framing. Olsen *et al* goes on to argue that qualitative data analysis provides ‘firmer ground from which to evaluate the courts’ role in the political process, their societal impact and their legitimacy.’³⁰ Yet, the article notes that the main features of the distinct legal methodology ‘especially its attention to legal detail’ must be maintained.³¹

Furthermore, the nature of the proposed research question requires a normative element to examine whether the UK’s implementation of the SCO concept allows for effective asylum procedure under human rights and refugee law. A normative legal analysis approach as a complimentary method has been established, ‘in legal reasoning normative arguments often rely directly on sophisticated empirical facts, which are discovered — or at least scrutinized — by empirical legal studies.’³² This research adopts a normative legal framework grounded in international refugee and human rights standards to evaluate the UK’s use of the SCO concept, with a focus on Albania. Rather than assessing domestic asylum law in isolation, the normative framework draws on non-binding but authoritative sources such as the UNHCR guidelines, alongside regional instruments such as the CoE resolution on accelerated asylum procedures.³³ These instruments collectively establish minimum standards for procedural fairness, individualised assessment, and the right to an effective remedy. By using these normative benchmarks, this research evaluates whether the procedural consequences of Albania’s SCO designation, such as accelerated decision-making or limitations on appeals, undermine the right to an effective asylum process.

In addition, this research will utilise an inter-disciplinary approach of a Socio-Legal based methodology in an aim to reveal ‘legal discourses and/or ‘legal realities’ with the judicial presumptions associated with the SCO designation.’³⁴ This will aim to be achieved through an Empirical Legal Research (ELR) approach to decisions of the Upper Tribunal Immigration and Asylum Chamber (UT). Hearings from this tribunal were selected for three reasons, firstly it is

³⁰ *Ibid.*, p. 327.

³¹ *Ibid.*, p. 328.

³² Yun-chien Chang and Peng-Hsiang Wang, ‘The Empirical Foundation of Normative Arguments in Legal Reasoning’ (2024) 1 *European Journal of Empirical Legal Studies* 69 <https://doi.org/10.62355/ejels.18070>.

³³ Council of Europe (Parliamentary Assembly) ‘Accelerated asylum procedures in Council of Europe member States’ (7 October 2005) Resolution 1471.

³⁴ A Argyrou, ‘Making the Case for Case Studies in Empirical Legal Research’ (2017) 13 *Utrecht Law Review* 95 <https://doi.org/10.18352/ulr.409>.

the only chamber with publicly accessible decisions, and secondly, its role as an appellant court makes for a more manageable case load. Thirdly, its late stage in the appeal process offers richer legal reasoning and offering cases that have reached this stage due to an alleged legal error or procedural unfairness, making these cases the most likely to test the SCO presumption. For these reasons they are ideal for interrogating how individualised assessments are being conducted in practice. However, the UT still sees a considerable number of applicants with Albanian origin, meaning a time-limitation was imposed as cases with a publication date within the six-month period of October 1st, 2024, to 1st March 2025. This period was established to allow for the analysis of a manageable case load.

The cases were then subject to a set of criteria to make them suitable for the research. First, they had to be from the selected period, secondly the cases had to be regarding an Albanian applicant and finally the claim had to include a claim of asylum. However, in UK practice, an asylum claim automatically includes consideration of both refugee status and humanitarian protection. Therefore, in most of the cases chosen the judge is additionally considering these forms of protection.

While qualitative analysis has been traditionally seen as a ‘less desirable’ means of research that lacks ‘precision, objectivity and rigour’, this can be minimised by adhering to an established methodology to minimise personal bias.³⁵ For this I will use King’s ‘Template Analysis’, which can be used in conjunction with a normative framework.³⁶ The methods allows for the combined use of both *a priori* (deductive) and *emergent* (inductive) codes. This is suited to the research question because *a priori* codes anchor the analysis in normative standards, while *emergent* themes are grounded in empirical findings that may not have been fully anticipated by the normative framework. These codes began as a number of ‘subordinate’ themes and were then consolidated into ‘template’ or ‘higher- order’ themes. In addition, King argues this approach allows for large volumes of text and ‘can handle rather larger data sets

³⁵ *Ibid.* p. 100.

³⁶ Nigel King, ‘Using Templates in the Thematic Analysis of Text’ in Cathy Cassell and Gillian Symon (eds), *Essential Guide to Qualitative Methods in Organizational Research* (SAGE Publications 2004) <https://ebookcentral.proquest.com/lib/lund/detail.action?docID=254634>.

more comfortably.³⁷ To aid with the coding process, I used NVIO to be able to collate data of the percentage of each theme and allow for cross-examination of cases.

Therefore, thematic analysis will enable the identification of recurring patterns in judicial reasoning particularly in relation to credibility, evidentiary standards, and engagement with international norms. By systematically coding legal judgments, the analysis uncovers how tribunals interpret and apply the presumption of safety and whether this aligns with the normative legal framework drawn from UNHCR and CoE guidance. This method highlights how formal legal standards are mediated through adjudication, revealing whether procedural safeguards are upheld or diminished in practice for claimants from designated SCOs such as Albania.

2.4 Limitations

While, using an ELR approach offers chance to analyse the ‘law in practice’ by offering an ‘auxiliary and complementary method in legal research’, the limitations of this approach must be acknowledged.³⁸ These limitations exist on both a general and research specific level. Solely, analysing cases from the Upper Tribunal would exclude the majority of cases that are certified as manifestly unfounded prior to reaching this stage. Subsequently this omission would be detrimental to the nature of the research question which encompasses the entirety of the asylum procedure. Therefore, as previously stated, the empirical data collected will be supplemented by secondary sources in the form of a public reports and inquiries that have collected primary research on the SCO concept on effective asylum procedures.³⁹ Subsequently, this two-tiered approach aims to mitigate any inherent methodological limitations by providing a holistic normative assessment.

³⁷ *Ibid*, p. 338.

³⁸ Argyrou, ‘Making the Case for Case Studies in Empirical Legal Research’ (2017) p .97.

³⁹ The foundations of this will be Marsons L (Public Law Project (PLP) 2025 “*Punishing the Victim: How the UK’s Broken Asylum System Fails the People It Should Protect*”, Helen Bamber Foundation – “*Denying Albanians Protection*” (April 2025) (n.22), Laura Sawyer, *Refusal to Consent: Factors Influencing the Uptake of Modern Slavery Support under the National Referral Mechanism* (Independent Anti-Slavery Commissioner, April 2025) <https://antislaverycommissioner.co.uk/media/dzmltiwo/refusal-to-consent-final-report.pdf>, Migrant & Refugee Children’s Legal Unit (MiCLU), *Breaking the Chains* (2024) <https://miclu.org/projects/breaking-the-chains>.

Chapter 3: Literature Review

3.1 The 'Safe Country' Concept in Asylum Law and Policy

3.1.1 *Legal origins and evolution*

While safety as a concept has deep roots in asylum adjudication, the assessment of it has been developed with the emergence of the SCO concept. Literature widely categorises this development in the UK into four stages, with the concept's origins being traced to the 1990s. Goodwin-Gill produced the foremost literature before the SCO concept had been formalised. After the signing of the 1990 Dublin Convention, which established the idea that asylum seekers should claim asylum in the first safe country they reach, Goodwin-Gill recognized this as laying the groundwork for an emerging practice listing so-called safe countries. He argued this practice presented a 'attractive approach' for administrators, particularly when the so-called safe country produces large amount of asylum seekers.⁴⁰ The justification being that 'additional resources can be freed up for the 'real' refugees'.⁴¹ Yet, Goodwin-Gill recognised the problematic nature of this emerging practice; how could countries be given 'a clean bill of health?'⁴² Therefore, Goodwin-Gill argued that 'International standards can and should govern the process' with the; 'key element in moving to rational and defensible assessments of risk will be the standards for collecting and verifying that information'.⁴³

This was shortly followed by the UK Asylum and Immigration Appeals Act 1993 which introduced a form of 'safe third country' rule, meaning asylum claims could be refused if the applicant could have sought protection elsewhere.⁴⁴ Followed by the Asylum and Immigration Act 1996 which tightened rules on asylum and introduced further limits, serving to lay the foundations for stronger 'safe country' presumptions.⁴⁵ However, the early 2000s saw the formalisation of 'safe country' lists under the NIAA. Under section 94, the Secretary of State can designate a country as 'safe' for all, or specific classes of people (e.g. men only). To qualify

⁴⁰ GS Goodwin-Gill, 'Safe Country? Says Who?' (1992) 4(2) *International Journal of Refugee Law* 248 <https://doi.org/10.1093/ijrl/4.2.248>.

⁴¹ *Ibid.*, p248.

⁴² *Ibid.* p. 248.

⁴³ *Ibid.* p 249.

⁴⁴ UK Asylum and Immigration Appeals Act HC Bill (1993) [23].

⁴⁵ Asylum and Immigration Act HC Bill (1996) [49].

the Home Office (HO) must find no serious risk of persecution, and no risk of breach of Article 3 of the ECHR (prohibition of torture and inhuman treatment). The legal implications of a country receiving this status include the asylum applications from nationals being presumed ‘clearly unfounded’ as well as being subject to a fast-tracked process with no right to an in-country appeal.

The third stage in the late 2000-2010s saw a series of legal challenges and adjustments to the SCO concept’s presumption of safety. *Crawley et al* challenge the ‘construction of policy categories based on binary, static and linear understandings of migration processes and experiences’, challenging the assumptions on which the concept itself is based on.⁴⁶ These challenges took the form of litigation around the ‘clearly unfounded’ certification, in cases such as *ZL and VL v SSHD*. In this case the Court determined if ‘at least one legitimate view of the facts or the law the claim may succeed, the claim will not be clearly unfounded’.⁴⁷ Therefore the Court ruled that even in a generally safe country, an individual could still face a real risk. In addition, *R v SSHD* reflected these arguments, by challenging the principle of non-refoulement when faced with being sent back to Greece, then considered a ‘safe’ Dublin country.⁴⁸ Within this case, the House of Lords accepted that systemic failures in the asylum system of a ‘safe’ country could undermine the presumption of safety. Evidently, these cases paved the way for more nuanced decision making, highlighting the need to check for systemic risk and the risk to certain vulnerable groups.

Up until present-day, the most recent era can be categorised as a hardening and expansion of the SCO concept. As discussed in the introduction, the 2022 NABA has strengthened section 94 powers, as well as introducing whole groups of countries ‘safe’. Furthermore, the 2023 IMA expanded the so-called ‘Whitelist’ of SCO countries. Under this expansion of the ‘safe’ country concept, countries such as Rwanda were determined to be ‘safe third countries’ under the 2024

⁴⁶ Heaven Crawley and Dimitris Skleparis, ‘Refugees, migrants, neither, both: categorical fetishism and the politics of bounding in Europe’s “migration crisis”’ (2018) 44(1) *Journal of Ethnic and Migration Studies* 48 <https://doi.org/10.1080/1369183X.2017.1348224>.

⁴⁷ *ZL and VL v Secretary of State for the Home Department* [2003] EWCA Civ 25, [2003] INLR 371 §58.

⁴⁸ *R v Secretary of State for the Home Department, ex parte Daly* [2001] UKHL 26, [2001] 2 AC 532.

Safety of Rwanda, which aimed but ultimately failed, to legislate the removal of asylum seekers.⁴⁹

3.1.2 Critiques of ‘safety’ as a legal fiction

An emerging area of literature has established critiques of the ‘safe enough’ narrative on which many SCO determinations have been founded on. Vogelaar argues that ‘policies fail to show how information was assessed and why substantial weight was attached to information in the determination that there is in general no persecution in Albania.’⁵⁰ Indeed, these criticisms reflect the initial concerns as outlined by Goodwin-Gill, who maintained that generalized assessments of safety could and should be based on ‘international standards’ to ensure ‘rational and defensible assessments of risk’.⁵¹ While the ‘safe enough’ narrative acknowledges problems exist, this standard is often used to downplay systemic violations and abuses. Literature by Creed *et al* suggests an active construction of what is considered ‘safe’ that enables political goals while maintaining a veneer of legality.⁵² These findings challenge ‘what is discursively constructed as ‘safe’ in return policies and practices.’⁵³

Furthermore, Costello argues that ‘although the consequences of [SCO] designation are mainly procedural, they seem to be fatal in practice.’⁵⁴ This article argues that ‘SCO practices have implications for the decisional autonomy of asylum adjudicators, an important but often understudied aspect of asylum practice.’⁵⁵ Indeed, the designation of a country as safe ‘set[s] up a presumption that the applicant is not a refugee, or at least to reduce the procedural safeguards in the process for assessing the claim.’⁵⁶

⁴⁹ *Safety of Rwanda (Asylum and Immigration) Act 2024* c 8 (UK).

⁵⁰ Femke Vogelaar, ‘The Presumption of Safety Tested: The Use of Country of Origin Information in the National Designation of Safe Countries of Origin’ (2021) 40(1) *Refugee Survey Quarterly* 106 <https://doi.org/10.1093/rsq/hdaa030>,

⁵¹ Cathryn Costello, ‘Safe Country? Says Who?’ (2016) 28(4) *International Journal of Refugee Law* 601 <https://doi.org/10.1093/ijrl/eev042>.

⁵² Xander Creed, Zeynep Kaşlı, and Shyamika Jaysundara-Smits, ‘Safe for Whom? A Human Security Perspective on Nigeria as a ‘Safe Country of Origin’’ (2023) 36(3) *Journal of Refugee Studies* 359 <https://doi.org/10.1093/jrs/fead002>.

⁵³ *Ibid.*, p. 359.

⁵⁴ Costello, ‘Safe Country? Says Who?’, p. 609.

⁵⁵ *Ibid.*, p. 602.

⁵⁶ Nationality, Immigration and Asylum Act (2002) [94].

Therefore, the existing literature places this thesis within the gaps of research in three keyways. Firstly, it attempts to bridge the normative concerns with procedural realities. As discussed, much of the existing scholarship critiques the conceptual and normative basis of SCO designations and their implications for procedural fairness. However, there is less empirical work examining how these concerns manifest in actual asylum decision-making, especially in specific jurisdictions like the UK. Secondly, much existing work on SCOs and procedural rights is EU-centric, providing limited insight in the post-Brexit era after the UK's departure from Asylum Procedures Directive (APD).⁵⁷ Therefore, this thesis provides a UK-specific lens on how global critiques of SCO designation apply within national legal systems. Thirdly, this thesis aims to fill a case-based gap regarding Albania, whose status as a SCO has received limited sustained academic focus until 2025, despite its prominence in UK asylum policy.

3.2 Striking a Balance

Maintaining these principles while also allowing states to exercise efficiency remains at the center of the SCO debate and associated literature. Hailbronner argues that the 'safe country' concept is essential to the development of more expeditious asylum procedures, with current practice 'bringing many European systems to the point of collapse'.⁵⁸ Despite acknowledging the concept presents a number of humanitarian and political considerations, 'Speedy asylum procedures should generally be considered to be in the interest of the asylum applicant and the state.'⁵⁹ Indeed, the efficiency within asylum systems is acknowledged as a 'legitimate goal' by UNHCR, particularly for maintaining public trust and resource management.⁶⁰

However, the UNHCR reaffirms that the goal of efficiency must be 'balanced with the overriding need to ensure access to fair and effective protection procedures.'⁶¹ Moreover, CoE guidelines maintain that 'balance' does not mean a 'compromise', because 'states cannot in

⁵⁷ Micheal John-Hopkins, M, 'The Emperor's New Safe Country Concepts: A UK Perspective on Sacrificing Fairness on the Altar of Efficiency' (2009) 21(2) *International Journal of Refugee Law* 218 doi:10.1093/ijrl/eep007.

⁵⁸ Hailbronner, 'The Concept of "Safe Country" and Expeditious Asylum Procedures: A Western European Perspective' (1993) 5 *International Journal of Refugee Law* 31.

⁵⁹ M Reneman, 'Speedy Asylum Procedures in the EU: Striking a Fair Balance Between the Need to Process Asylum Cases Efficiently and the Asylum Applicant's EU Right to an Effective Remedy' (2013) 25 *International Journal of Refugee Law* 717.

⁶⁰ UNHCR, *Fair and Efficient Asylum Procedures: A Non-Exhaustive Overview of Applicable International Standards* (2 September 2005) <https://www.refworld.org/reference/countryrep/unhcr/2005/en/33790>.

⁶¹ *Ibid.*

any circumstances compromise over their international obligations under the 1951 Refugee Convention and the 1950 European Convention on Human Rights by reason of the high number of asylum applications they receive.’⁶² These authoritative interpretations explicitly determine the goal of efficiency in itself cannot constitute any degradation from states obligations to the principle of non-refoulement and right to effective remedy.

Within this debate emerges what Hailbronner suggests is the essential question: ‘whether it is in fact possible to determine safe countries on a general basis?’, and whether the call for asylum adjudication efficiency, through the implementation of the SCO concept, is compatible with ‘procedural safeguards that are necessary to guarantee the correctness of such decision.’⁶³

3.3 The Case of Albania

Under section 94 of the NIAA, the UK Home Office classified Albania as a ‘generally safe’ country.⁶⁴ This designation is often framed in two lenses. The first supporting Goodwin-Gill’s argument that Albania’s designation as a SCO stemmed from the politization of asylum procedures, reducing numbers from countries considered ‘major producers of asylum-seekers.’⁶⁵ This is supported by the historical context in which the collapse of the Albanian state in 1997 and the violence during the Kosovo War (1998–1999) spilling over, to prompt large influxes of refugees to the UK. However, the official Home Office reasoning was that Albania had stabilised politically at the end of generalised violence, meaning that government capacity had improved, and democratic norms had been restored.⁶⁶ This designation was reaffirmed in 2023, with the reasoning Albania is an EU candidate country who is ‘not at war, and is a signatory to European Conventions’.⁶⁷

⁶² Parliamentary Assembly of the Council of Europe, *Resolution 1471 (2005) on Accelerated Asylum Procedures in Council of Europe Member States* (7 October 2005).

⁶³ Hailbronner, *The Concept of “Safe Country”*, p. 49.

⁶⁴ Goodwin-Gill, *‘Safe Country? Says Who?’*, p. 248.

⁶⁵ *Ibid.*, p. 249.

⁶⁶ UK High Commissioner for Refugees, *United Kingdom: Country of Origin Information Report – Albania* (2002) 22 <https://www.refworld.org/legal/natlegcomments/unhcr/2002/en/33623>.

⁶⁷ Home Affairs Committee, *Asylum and Migration: Albania* (HC 197, 17 May 2023) <https://committees.parliament.uk/publications/40291/documents/204657/default/>.

When analysing the claims from nationals through accelerated procedures with appropriate procedural safeguards, ‘this is permissible where it reflects a presumption, based on impartial and up-to-date evidence from a range of sources, that such claims are likely (or unlikely) to be successful and which may be rebutted in individual cases.’ However, by the government including Albania on the IMA clause 59 list, all claims would be considered inadmissible in the absence of ‘exceptional circumstances’. This the UNHCR takes the position the policy is ‘in direct contradiction to the view of the UK’s country of origin information department and the specialist domestic tribunal charged with setting out ‘country guidance’ that certain groups of Albanian citizens may be at real risk of persecution.’⁶⁸ This has prompted criticism from legal scholars who suggest there has been a significant increase of cases of human trafficking being certified as ‘unfounded’, leaving them vulnerable to return to Albania.⁶⁹

⁶⁸ UNHCR, *UNHCR Legal Observations on the Illegal Migration Bill* (22 March 2023) <https://www.refworld.org/legal/natlegcomments/unhcr/2023/en/124244>.

⁶⁹ Symes and Fitzsimons, ‘Albania: Is it really a “safe country” for the purposes of certification?’ (7 September 2024) Garden Court Chambers.

Chapter 4: Normative Framework

Indeed, the SCO concept has been heavily criticised by human rights bodies since its emergence in the 1990s. The original view of the UNHCR was that the concept was ‘inconsistent with the spirit and possibly the letter of the 1951 Convention’.⁷⁰ This was based on the grounds of Article 3 which obligates states ‘to apply its provisions without discrimination as to country of origin’, Article 33 on the prohibition against refoulement, as well as ‘the individual character of refugee status and the subjective nature of fear of persecution, which requires evaluation of the applicant's statements, rather than solely a judgement on situations prevailing in countries of origin’.⁷¹ Furthermore, the background note went on to say that, in the UNHCRs view, ‘it serves to politicise an essentially humanitarian process’.⁷²

However, the UNHCR later acknowledged ‘cases from safe countries of origin (SCOs) may be channelled into accelerated procedures provided procedural safeguards are assured’, which includes ‘providing the applicant with all the necessary information, in an appropriate language, to be able to effectively challenge the presumption of safety, and to have access to legal aid, to a personal interview, and to an effective remedy with suspensive effect.’⁷³ With these important caveats, the UNHCR has established its role as a source on how to interpret the the associated obligations.

Furthermore, in 2005 the Council of Europe Parliamentary Assembly passed a resolution accelerated procedures, also providing specific considerations as regards to the state implementation of SCO lists. Although not binding international law, it carries important normative weight and can be used to interpret or influence the application of binding obligations, especially the relevant articles 3 and 13 of the ECHR. It came in the context of what the assembly described as an ‘urgent need for the development of either overall guidelines,

⁷⁰ UNHCR, *Background Note on the Safe Country Concept and Refugee Status* (EC/SCP/68, 26 July 1991) <https://www.unhcr.org/publications/background-note-safe-country-concept-and-refugee-status>.

⁷¹ *Ibid.*, §5.

⁷² *Ibid.*, §6.

⁷³ UNHCR, *Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity* (December 2016) <https://www.refworld.org/reference/regionalreport/unhcr/2016/en/114063>.

bringing together best practices on accelerated asylum procedures, or for the development of specific guidelines on particular aspects of accelerated procedures.’⁷⁴

Although, the Parliamentary Assembly acknowledged the need for states to process asylum applications in an efficient manner, they noted ‘this balancing of interests, however, does not imply in any circumstances that states may compromise with respect to their international obligations.’⁷⁵ These obligations being those under, but not exclusive to, the 1951 Refugee Convention and its 1967 Protocol and the 1950 European Convention on Human Rights and its Protocols.

In addition, the guidelines stress the potential for procedural implications arising for applicants from a SCO. Stating states should ‘apply minimum procedural guarantees equally for all asylum applications’, irrespective of country-of-origin.⁷⁶

- a) Ensure that clear and demonstrable safeguards are adopted to guarantee an effective access to an asylum determination procedure which can lead to the granting of refugee status or other forms of international protection;
- b) Ensure that the burden of proof does not switch to the applicant to prove that a country is unsafe, and that the applicant has an effective opportunity to rebut the presumption of safety;
- c) Take great caution in adopting, in the context of the proposal for a European Council directive, a list of safe countries of origin which may lead to a lowering of standards of protection for asylum seekers from the countries concerned and could undermine the underlying concept of refugee protection, which is based on the individual situation of the asylum seeker rather than a general analysis and judgment on the country’⁷⁷

The reasoning behind these articles is expanded on within the preparatory report from report the Committee on Migration, Refugees and Population, in which certain concerns emerging from

⁷⁴ *Ibid.*, Summary.

⁷⁵ Council of Europe (Parliamentary Assembly) ‘Accelerated asylum procedures in Council of Europe member States’ (7 October 2005) Resolution 1471.

⁷⁶ *Ibid.*, § 8.1.5.

⁷⁷ *Ibid.*, § 8.2.

accelerated procedures are examined in relation to International Refugee and Human Rights Standards. These manifest in largely procedural concerns as regards to time limits, categories exempted from accelerated procedures, and limitations to the right of appeal. The report calls for states to refrain from ‘automatic and mechanical application of short time limits to lodge an application’, due to the fact the findings of *Jabari v. Turkey* which found it at ‘variance with the fundamental value embodied in Article 3 of the Convention’.⁷⁸

4.1 Individualized and Substantive Assessment

As previously emphasised, a foundational principle of international refugee and human rights law is that each asylum claim must be subject to an individualised and substantive assessment. This principal stems from obligations under the 1951 Refugee Convention and its 1967 Protocol, as well as guidelines from the UN Human Rights Committee and regional human rights bodies, which consistently affirm that risk of persecution or serious harm must be assessed in light of the applicant’s personal circumstances. The UNHCR’s guidance on asylum procedures underscores that states must not rely solely on generalised information about a country’s conditions to reject a claim, particularly when there are indications of potential risk for specific subgroups.

Furthermore, jurisprudence such as *F.G. v. Sweden* reinforces that authorities must actively consider whether an individual faces risk, even where this has not been explicitly raised by the applicant. In this context, the designation of a country as ‘safe’ cannot displace the need to examine personal narratives, past persecution, or the applicant’s membership of a vulnerable or marginalised group.⁷⁹ Subsequently, any blanket bans of specific nationalities can be viewed as incompatible with the obligations under the ECHR. Failure to conduct such a substantive assessment risk undermining the non-refoulement principle and results in procedural unfairness. Therefore, accelerated, or simplified procedures applied to applicants from ‘safe’

⁷⁸ *Ibid.*, § 8.7.

Jabari v. Turkey (App no 40035/98) ECHR 11 July 2000 - This case addressed the applicant’s risk under Article 3 ECHR and her access to an effective remedy under Article 13, following procedural barriers in Turkey’s asylum system.

⁷⁹ *F.G. v. Sweden* (App no 43611/11) ECHR (Grand Chamber) 23 March 2016.

countries must still ensure that individual risks are meaningfully considered, with the burden of proof and evidentiary standards adapted accordingly.

Furthermore, the UNHCR establishes the provision of a personal interview ‘as part of a full, fair and individual examination’.⁸⁰ This follows the view that asylum is characteristically individualised under the convention. Yet very few European states have established this procedural safeguard. Although the EU has created provisions under the Asylum Procedures Directive (APD), ‘Article 12 (2) (c) with Article 23 (4) (c) APD allows states to derogate from the requirement to afford a personal interview to an applicant whose country of origin is designated as safe.’⁸¹ During its membership the UK did not derogate from this provision and continues to conduct interviews in the post-Brexit era. However, this procedural safeguard can be rescinded in fast-track scenarios or non-suspensive appeals (especially under section 94), where the Home Office considers the claim patently unfounded after reviewing documents.

4.2 Principle of Effectiveness (Efficiency vs. Protection)

One of the main arguments for the implementation of the SCO concept is the aim associated with ‘short time limits in first instance asylum proceedings aim to ensure the efficient and cost-effective examination of cases’.⁸² While the UNHCR recognises that efficient asylum procedures are in the interest of both that state and applicant, any acceleration must be ‘in accordance with general legal principles of Community law and must not render practically impossible or excessively difficult the exercise of rights or the fulfilment of procedural safeguards; this is generally referred to as the principle of effectiveness.’⁸³

Moreover, the CoE resolution stresses states must ‘take fully into account that acceleration of manifestly unfounded or clearly abusive cases could, in certain circumstances, most effectively

⁸⁰ UNHCR, Section 13: The Safe Country of Origin Concept in *The Safe Country of Origin Concept* (UNHCR, 2009) 40 <https://www.refworld.org/policy/legalguidance/unhcr/2009/4bab55ea2.pdf>.

⁸¹ *Ibid.*, p. 40.

⁸² UNHCR, *Background Note on the Safe Country Concept and Refugee Status* (UNHCR, 26 July 1991).

⁸³ *Ibid.*, p. 5.

occur at the appeal stage, through shorter but reasonable time limits for submitting an appeal'⁸⁴ This applies a standard that state should allow an appeal process rather than deny it outright, but it supports the idea of placing time constraints. This attempts to balance both the interests of a rapid process while preserving key procedural rights of applicants. In addition, the quality of decision making in the first instance is acknowledged 'one of the best ways of speeding up the asylum process'.⁸⁵ Although this statement admittedly proves to be vague in nature, it serves to highlight the particularly problematic aspects of accelerated procedures. This being that accelerated procedures 'do[es] not guarantee that every asylum application will be examined in a fair and proper manner and that an effective remedy will not be available in all circumstances.'⁸⁶

The UNHCR highlights implications of the principle of effectiveness for the speed of the procedure in reference to two specific guarantees: the right to legal assistance and representation; and the right to information. Indeed, the right to legal assistance and representation is 'undermined' when accelerated time-limits may not allow for time to consult a legal advisor.⁸⁷ This is worsened when communication can only take place through an interpreter. Moreover, access to information is essential to be able to exercise an applicant's rights during asylum proceedings, with the right to information being undermined if the individual is unable to meaningfully act upon it. This may occur, for instance, when the asylum procedure begins immediately after the information is provided and the applicant is given only a few days to respond or prepare. Therefore, it can be concluded the principle of effectiveness requires that asylum applicants be granted sufficient time to understand and act upon the information provided to them regarding their rights and obligations. Procedural deadlines that do not allow adequate time for this may constitute a breach of that principle.

These standards promote the approach that states must adopt best practices from the outset of the asylum process by appealing to the incentive of efficiency. These standards being: access to legal assistance; relevant information; and the right to appeal (explored in the next section). This was reflected in *Klass and Others v. Germany*, where the ECtHR held that Article 13 of

⁸⁴ Council of Europe, Resolution 1471, § 8.1.4

⁸⁵ *Ibid.* 8.1.6.

⁸⁶ *Ibid.*, § 4.

⁸⁷ *Background Note on the Safe Country Concept and Refugee Status*, p.6.

the Convention must be understood as guaranteeing an effective remedy before a national authority to individuals alleging a violation of their Convention rights and freedoms.⁸⁸

4.3 Procedural Fairness and the Right to an Effective Remedy

The designation of a country as a SCO can significantly compromise the principle of procedural fairness and the right to an effective remedy, both central to refugee and human rights law. Procedural fairness requires that asylum applicants are afforded a meaningful opportunity to present their claims, supported by adequate legal representation, access to relevant country of origin information, and the ability to challenge adverse decisions. However, accelerated procedures associated with SCO designations often truncate these safeguards.

Accordingly, UNHCR determined a key procedural safeguard essential to the concept of effective remedy to be that the SCO designation still afford applicants the ability to appeal. The standards set include ‘that the appeal be considered by an authority different from and independent of that making the initial decision’, as well as expedited appeals for which a time limit has been imposed must include ‘measures to ensure that an asylum-seeker has prompt access to legal advice, interpreters and information about procedures, so that s/he still has access to an effective remedy.’⁸⁹ Furthermore, the appeal process must respect the principle of non-refoulement meaning ‘the remedy must allow automatic suspensive effect except for very limited cases.’⁹⁰

However, the UNHCR acknowledges that while a remedy against a decision to channel a claim into an accelerated procedure may not be required, a procedure that deprives an applicant (in practice or law) access to is at odds with international standards.⁹¹ This calls into question the

⁸⁸ *Klass and Others v. Germany* (App no 5029/71) (Plenary) (1979–80) 2 EHRR 214 (ECHR, 6 September 1978).

⁸⁹ UNHCR, *Asylum Processes (Fair and Efficient Asylum Procedures)* (UNHCR, EC/GC/01/12) 10 <https://www.unhcr.org/in/media/asylum-processes-fair-and-efficient-asylum-procedures>.

⁹⁰ UNHCR, *Statement on the right to an effective remedy in relation to accelerated asylum procedures*, p.16.

⁹¹ *Ibid.*, p.7.

compatibility with international standards when a categorisation of an application as ‘clearly unfounded’ has the effect that no in-country right of appeal is available.

Concerningly, the UNHCR Statement on the right to an effective remedy in relation to accelerated asylum procedures highlights the UK’s appeal process. In the UK, individuals may appeal negative decisions within the country to the specialised Asylum and Immigration Tribunal, which has the authority to review legal issues. However, this in-country right of appeal is not available when the deciding authority deems the claim to be clearly unfounded or if national security concerns are involved.

However, since the scope of the Upper Tribunal judicial review is limited to assessing the lawfulness of a decision rather than its merits, its effectiveness as a remedy in asylum and immigration cases remains contested. Nonetheless, the adequacy of judicial review as an effective remedy continues to face challenges before the ECtHR. Under national law, judicial review focuses solely on the process by which a decision was made, not on the substance of the decision itself. Although the ECtHR has found in a leading case that judicial review in the UK can amount to an effective remedy, two judges dissented, arguing that ‘it appears to me that a national system... which excludes the competence to make a decision on the merits cannot meet the requirements of Article 13 [ECHR].’⁹²

4.3.1 Proper Assessment of Country-of-Origin Information (COI)

Furthermore, in addition to the right to appeal a (negative) decision, the UNHCR considers that the right to an effective remedy includes ‘the remedy must provide for a review of the claim by a court or tribunal, and the review must examine both facts and law based on up-to-date information.’⁹³ In addition, best state practice should not apply the designation in a rigid manner to deny procedural safeguards. Rather, ‘it bases any presumption of safety on precise, impartial and up-to-date information and admits the applicant to the regular asylum procedure,

⁹² *Vilvarajah v. UK* Applications Nos. 13163/87, 13164/87 and 13165/87, ECtHR judgment of 30 October 1991. Dissenting opinion by Judge Walsh, supported by Judge Russo. In UNHCR Statement on the right to an effective remedy in relation to accelerated asylum procedures, p. 21.

⁹³ *Ibid.*, p.7.

so that s/he has an effective opportunity to rebut any general presumption of safety based on his/her particular circumstances.’⁹⁴

COI largely forms the evidentiary foundation for determining which countries are designated as ‘safe’, upholding, or challenging that presumption in asylum proceedings, and informing judges and caseworkers decisions on credibility and risk. Indeed, the role of COI in forming serving to rebut, or form the presumption of safety has been well established in scholarship by Vogelaar.⁹⁵ Therefore, as noted by the CoE Guidelines on human rights protection in the context of accelerated asylum procedures, ‘The safe country of origin concept shall be used with due diligence, in accordance with sufficiently specific criteria for considering a country of origin as safe. Up-to-date information is needed from a variety of reliable and objective sources, which should be analysed.’⁹⁶

Subsequently, COI forms vital context for asylum cases. This value is highlighted in an UK Home Office report reference in a UNHCR document, the ‘provision of complete, accurate and timely COI is of vital importance to the efficiency of determination procedures, and for the appropriate assessment of applications for asylum.’⁹⁷ Furthermore, the critiques of the COI collected on Albania include it ‘does not properly examine the available COI in light of the conditions set for a SCO designation.’⁹⁸ The factor of inaccurate or unreliable COI places applicants from Albania and potentially other SCOs not only at risk of procedural violations, but substantive too.

4.5 Non-Refoulement and Protection from Harm

The principle of non-refoulement is the cornerstone of international refugee protection and is enshrined in Article 33 of the 1951 Refugee Convention. This principle prohibits states from returning individuals to territories where they face a real risk of persecution, torture, or other serious harm. The UNHCR’s *Guidelines on International Protection No. 6* explicitly caution

⁹⁴ UNHCR, EC/GC/01/12, p.9.

⁹⁵ Vogelaar, ‘*The Eligibility Guidelines Examined*’, p. 617.

⁹⁶ Council of Europe, *Guidelines on Human Rights Protection in the Context of Accelerated Asylum Procedures* and Explanatory Memorandum 9 (Committee of Ministers, 1 July 2009).

⁹⁷ UNHCR ‘Country of Origin Information: Towards Enhanced International Cooperation’ (Department of International Protection Geneva 2004).

⁹⁸ *Ibid.*, p. 124.

against the misuse of ‘safe country’ concepts in ways that could undermine individual risk assessments. In particular, the designation of a state as a SCO must not displace the need for a full and fair examination of the applicant’s personal circumstances. Furthermore, the *UNHCR Handbook* emphasizes that general conditions in a country, even if deemed stable for most, do not eliminate the possibility that an individual may face serious harm upon return. Accelerated procedures linked to SCO designations risk shortcutting this analysis by embedding a presumption of safety that may not align with the applicant’s lived experiences or the nuanced threats they may face.⁹⁹

The risk of violating the principle of non-refoulement is reiterated within the explanatory memorandum of the CoE resolution by Pedro Agramunt, highlighting that ‘Accelerated procedures come with a number of attendant risks linked to the possibility of *refoulement*’.¹⁰⁰ In his contemporary assessment he criticized that ‘accelerated asylum procedures as applied at present in Council of Europe member states may result, *inter alia*, in a violation of the principle of *non-refoulement* and/or Article 3 of the European Convention on Human Rights.’¹⁰¹ Although his view does not go as far as to dismiss the use of accelerated procedures, provided that all applicants have ‘effective access to an asylum determination procedure which can lead to the granting of refugee status, even if accelerated.’¹⁰² The distinction made is that if the nationality of an asylum seeker is used as an argument solely to exclude him or her from an asylum determination procedure, this constitutes discrimination on the grounds of nationality and potentially in violation of the principle of non-refoulement.¹⁰³

Therefore, the resolution reflects the need to process asylum applications in ‘a rapid and efficient manner cannot prevail over the effective exercise of the prohibition of refoulement.’¹⁰⁴ Moreover, the Parliamentary Assembly strongly encourages states to establish objective and

⁹⁹ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (HCR/IP/4/ENG/REV.4, April 2019), p. 180.

¹⁰⁰ Council of Europe, ‘Accelerated Asylum Procedures in Council of Europe Member States: Report (Doc 10655)’ (Committee on Migration, Refugees and Population, 2 Aug 2005) Rapporteur: Pedro Agramunt, part 3 §1.

¹⁰¹ *Ibid.*, §65.

¹⁰² *Ibid.*, §71.

¹⁰³ *Ibid.*, §71.

¹⁰⁴ *Ibid.*

independent monitoring mechanisms to oversee national legislation and procedures on safe countries, ensuring that the rights of asylum seekers are effectively protected under the Refugee Convention. This provision explicitly calls for mechanisms that are objective, independent, and empowered to monitor national law and practice, with the aim of safeguarding individuals against refoulement and ensuring access to protection.¹⁰⁵

4.6 Rebuttable Presumption and Protection of Vulnerable Groups

As noted by Agramunt, without checks and balances being built into national systems, there is a risk with accelerated procedures for applicants from SCOs that the ‘that the burden of proof that the country is not safe may effectively become insurmountable for the asylum seeker.’¹⁰⁶ This is reflected in Article 8.2.2 which states to ‘ensure that the burden of proof does not switch to the applicant to prove that a country is unsafe and that the applicant has an effective opportunity to rebut the presumption of safety.’¹⁰⁷

Regarding exemptions from accelerated procedures, the Rapporteur Agramunt maintains states should ‘ensure that certain categories of persons be excluded from accelerated procedures due to the vulnerability of the persons concerned and the complexity of the case’.¹⁰⁸ Namely separated children or unaccompanied minors, victims of torture and sexual violence and trafficking. In addition, the report highlights concerns arising from the right of appeal arising from SCO being subject to accelerated procedures, ‘as regards the right of appeal with suspensive effect: to ensure that the right to an effective remedy under Article 13 of the European Convention on Human Rights is respected, including the right to lodge an appeal against a negative decision and the right to suspend the execution of measures until the national authorities have examined their compatibility with the European Convention on Human Rights.’¹⁰⁹ Moreover, countries that implement appeals on asylum decisions with no suspensive effect place applicants at odds with Article 3.

¹⁰⁵ *Ibid.*, §114.

¹⁰⁶ *Ibid.*, §72.

¹⁰⁷ Council of Europe, Resolution 1471, 8.2.2.

¹⁰⁸ *Ibid.*, 8.11.

¹⁰⁹ *Ibid.*, 8.5.

Furthermore, the UNHCR position was developed in a report to the European Union, in which it laid out a framework of procedural safeguards regarding the concept. The report highlights the associated risks with the UK's quasi-presumption of safety and the subsequent legal implications. Most notably that certification of claims is mandatory unless authorities are satisfied the application is not clearly unfounded, shifting the burden of proof to rest entirely on the applicant. Rather, the report stresses that 'this should not result in an unreasonably increased burden of proof on the applicant', ensuring that 'the shared duty between the applicant and the determining authority to ascertain the facts still applies.'¹¹⁰ In addition, the UNHCR has expressed that exemptions for certain cases of a 'complex nature' such as 'claims based on sexual orientation and/or gender identity are generally unsuited to accelerated processing or the application of "safe country of origin" concepts.'¹¹¹

Subsequently, these principles and procedural guarantees are arranged in the Guidelines of Human rights protection in the context of accelerated asylum procedures (2009). The guidelines take mind to procedural rights, particularly those of vulnerable persons. Most notably the document synthesises the standards associated with those applicants from SCO, and how states should regulate this concept and its implementation.

1. The examination of the merits of the asylum application shall be based on the asylum seeker's individual situation and not solely on general analysis and evaluation of a given country.
2. The fact that the asylum seeker comes from a safe country of origin shall be only one element among others to be taken into account in reaching a decision on the merits of the claim.
3. The safe country of origin concept shall be used with due diligence, in accordance with sufficiently specific criteria for considering a country of origin as safe. Up-to-date information is needed from a variety of reliable and objective sources, which should be analysed.

¹¹⁰ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, §196.

¹¹¹ *Ibid.*, p. 180.

4. All asylum seekers shall be given an effective opportunity to rebut the presumption of safety of their country of origin.¹¹²

4.7 ECtHR Case Law

At the time of writing this thesis, no cases were identified in specific reference to SCOs in the ECtHR. However, there has been ECtHR jurisprudence concerning states removing applicants to a ‘Third Safe Country’, in violation of their respective obligations. Although not directly applicable, these cases provide jurisprudence and a normative interpretation of the concept of ‘safety’ in relation to obligations under ECHR. Although not going so far to question the SCO designation itself, these cases address related procedural concerns.

Ilias and Ahmed v. Hungary

In this case, the ECtHR found that Hungary violated Article 3 by returning two Bangladeshi asylum seekers to Serbia, a country Hungary had designated as ‘safe.’ Although this violation was in reference to deportation to a safe third country, it clarified that ‘persons seeking asylum to rely on and to substantiate their individual circumstances that the national authorities cannot be aware of, those authorities must carry out of their own motion an up-to-date assessment, notably, of the accessibility and functioning of the receiving country’s asylum system and the safeguards it affords in practice.’¹¹³

These assessments must be ‘documented in authoritative reports, notably of the UNHCR, Council of Europe and EU bodies’, meaning the presumption of safety is not absolute.¹¹⁴ Furthermore it upholds the principles in Resolution 1471, that the burden of proof should not be switched to the applicant to prove that a country is unsafe, in the Court’s opinion particularly in the context ‘time-limit for appeals was only seven days, which deprived the applicants of their right to rebut the presumption that Serbia was a safe third country in their case.’¹¹⁵

¹¹² Council of Europe, *Guidelines on Human Rights Protection in the Context of Accelerated Asylum Procedures* and Explanatory Memorandum, p. 9.

¹¹³ *Ilias and Ahmed v. Hungary* (Grand Chamber) App No 47287/15, 21 November 2019 § 141.

¹¹⁴ *Ibid.*, §141.

¹¹⁵ *Ibid.*, §105.

T.I. v. the United Kingdom

In this case the UK planned to return *T.I.*, a Sri Lankan national to Germany under the Dublin Convention, which assigned Germany responsibility for examining his asylum claim. Subsequently, *T.I.* feared that Germany might return him to Sri Lanka, where he risked torture or persecution, arguing that the UK would be complicit in a potential chain refoulement.¹¹⁶ Despite the Court deeming the case inadmissible, the case's legal relevance originates from its clarification of key legal principles.

Firstly, the Court emphasized there should be no blind trust in 'Safe' countries. Meaning that even though Germany was presumed safe, states must verify whether the asylum system in the receiving country will provide adequate protection. The Court's clarification on due-diligence obligations reinforced that states remain responsible under Article 3 if a transfer foreseeably leads to torture or inhuman treatment. This principle is foundational for challenging SCO designations, arguing that presumed safety cannot override real risks of rights violations.

M.S.S. v. Belgium and Greece

The case involves an applicant returned by Belgium to Greece under the Dublin II Regulation, which presumed Greece to be a safe country for asylum processing. The Court found violations of Article 3 (inhuman or degrading treatment) and Article 13 (lack of effective remedy). Although, again in reference to the 'Third Safe Country' concept, the underlying principles apply strongly to SCO designations and accelerated procedures like those in the UK. The Court emphasized that automatic reliance on safety presumptions, whether under the Dublin system or national SCO lists, can lead to rights violations if individual circumstances are ignored; 'the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment'.¹¹⁷

¹¹⁶ *T.I. v the United Kingdom* (App No 43844/98) ECHR (dec.), 7 March 2000.

¹¹⁷ *M.S.S. v. Belgium and Greece* (Grand Chamber) App No 30696/09, ECHR 21 January 2011 §353.

Moreover, Belgium failed to assess *M.S.S.*'s individual situation before transfer, reaffirming the principle that 'applications shall be examined individually, objectively and impartially.'¹¹⁸ These procedural guarantees form the right to effective remedy (Article 13), in which the Court rules *M.S.S.* had no effective legal remedy in Greece, clarifying that asylum systems must guarantee meaningful access to appeal and safeguard against refoulement. This is particularly relevant in the case of the SCO concept being used to give non-suspensive appeals. *M.S.S. v. Belgium and Greece* affirms that procedural safeguards cannot be hollowed out by administrative presumptions.

¹¹⁸ *Ibid.*, §85.

Chapter 5: A Normative Gap? UK Safe Country Policy and International Legal

Principles

In order to supplement and support the qualitative analysis that will be discussed in the next section, secondary sources will be used in this chapter to analyse access to effective asylum procedures for applicants from SCOs. These materials include (but are not limited to) two research papers released by legal experts in February and April 2025. The first being a research report by developed by Public Law Project, Shpresa Programme, the MiCLU based at Islington Law Centre. This collaborative research project collected a sample of representative case studies of Albanian nationals seeking protection in the UK under the Islington Law Centre through October 2023 and June 2024.¹¹⁹ The material was collected through semi-structured interviews, which was then subject to a coding exercise identifying key themes.

The second research project examined was conducted by the The Helen Bamber Foundation (HBF), a specialist clinical and human rights charity that works with survivors of trafficking, torture, and other forms of extreme human cruelty.¹²⁰ Published in April 2025, the report offers an in-depth analysis of government policy on the impact of labeling countries ‘safe’ for victims of trafficking (VOT). The scope of this report covers Albanian VOT seeking protection, as well as providing case studies from those receiving the foundations Model of Integrated Care on their experiences seeking protection in the current political climate. HBF analysed the cases of 34 Albanian clients who are survivors of trafficking, collecting statistics on the outcome of their proceedings, as well as documenting experiences.

Both reports reflect distinct themes which may undermine the right to an effective asylum procedure under current policy: (1) Difficulty accessing quality legal advice and representation; (2) Difficulty making personal and traumatic disclosures; (3) Systemically poor Home Office decision-making; (3) Encouraging return to unsafe countries.¹²¹ Additionally, the analysis will

¹¹⁹ Lee Marsons (Public Law Project), *Punishing the Victim: How the UK’s broken asylum system fails the people it should protect* (Public Law Project, 28 February 2025) <https://publiclawproject.org.uk/content/uploads/2025/02/Punishing-the-Victim.pdf> accessed 16 June 2025.

¹²⁰ Helen Bamber Foundation, *Dismissing Risk: The Impact on Trafficking Survivors of Labelling Countries of Origin as “Safe”* (Briefing, April 2025) https://www.helenbamber.org/sites/default/files/2025-04/Dismissing%20Risk_April%202025.pdf accessed 16 June 2025.

¹²¹ *Punishing the Victim*, p. 7.

utilise independent reports on inspection of asylum case work by the ICIBI. Particularly the latest report which looks at how the 2022 NABA has been implemented.¹²²

5.1 Access to an Individualized and Substantive Assessment

On the surface, the existing legislation enacted in the UK can be said to undermine the right to an effective asylum procedure. The most extreme being the IMA which passed section 59 of the Act. This provision makes ‘inadmissible asylum claims from European Economic Area (EEA) states, as well as Albania, India, and Georgia, unless there are exceptional circumstances’.¹²³ The 2024 Border Security, Asylum, and Immigration Bill, which, whilst repealing much of the IMA, retains the blanket ban imposed section 59. Although not substantively in force, it has been used to make regulations under s59(3) and this has been used by the previous government to add India and Georgia to the list of ‘safe’ countries in section 80A.¹²⁴ This means it is plausible that these blanket exclusions may be enacted.

This is in direct contradiction to UNHCR that has emphasized, under international law labelling countries of origin as ‘safe’ is permissible only as a means of prioritising the processing of asylum claims, not for automatically excluding them. Blanket bans on asylum applications based solely on nationality are not acceptable.¹²⁵ Notably, the memorandum to the Illegal Migration Bill, the Home Office cited the ECtHR case *Ilias and Ahmed v. Hungary* to support the extension of section 80A to human rights claims and the designation of countries like Albania as safe.¹²⁶ However, this case specifically dealt with removals to *safe third countries*, not countries of origin. Moreover, the Court found that Hungary had breached Article 3 of the ECHR by presuming Serbia was safe without carrying out the required thorough and individualised assessment.

¹²² Independent Chief Inspector of Borders and Immigration, *An Inspection of Asylum Casework (June–October 2023)*(GOV.UK, 29 February 2024).

¹²³ *Ibid.*, p.11.

¹²⁴ *Border Security, Asylum, and Immigration Bill* (HC Bill 205, Session 2024–25).

¹²⁵ UNHCR, *Legal Observations on the Illegal Migration Bill* (2 May 2023) <https://www.unhcr.org/uk/media/unhcr-legal-observations-illegal-migration-bill-02-may-2023>.

¹²⁶ Home Office, *Illegal Migration Bill: European Convention on Human Rights Memorandum* (HC Bill 262, 2022–23) (2 March 2023) <https://publications.parliament.uk/pa/bills/cbill/58-03/0262/ECHR%20memo%20Illegal%20Migration%20Bill%20FINAL.pdf>.

Moreover, the uncovering of Operation BRIDORA by the ICIBI during the 2023 inspection report raises serious concerns of compliance with international standards of allowing for individual assessments.¹²⁷ Indeed, the average Albanian grant rate for asylum claims was 49% in 2022, which was reduced to 14% in 2024.¹²⁸ Therefore, this directly coincides with the decision taken at ministerial level that ‘no more than 2% of Albanian claims should be successful’.¹²⁹ Therefore, despite section 59 not being substantively in force, these policy measures indicate a restriction of asylum claims on the basis of nationality. This suggests that in many cases Albanian applicants are not afforded an individual assessment but rather seen as a collective subject to restrictions informed by numerical targets, not the substance of their claims.

5.1.1 Provision for a personal interview

As established in the normative framework, one of the necessary procedural safeguards proposed by the UNHCR is the provision for a personal interview. Originally, under the 2002 NIAA, there was no clear requirement to inform the applicant in advance that the decision-maker considers their country of origin to be safe. During the substantive interview stage, applicants from designated safe countries were not granted additional time to submit further evidence compared to other claimants (only 48 hours in detained procedures and five working days in non-detained cases). As a result, the UNHCR expressed concern about this, particularly because of the implications a *certification* entails.¹³⁰

Accordingly, the 2022 NABA scrapped the previous time restraints, now the Secretary of State can now serve an evidence notice requiring claimants to submit support for their asylum or

¹²⁷ *An Inspection of Asylum Casework (June–October 2023)*, p.56.

¹²⁸ *Punishing the Victim*, p. 11

Home Office, *Immigration System Statistics, Year Ending December 2022* (Official Statistics, 23 February 2023) <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-december-2022> and Home Office, *Immigration System Statistics, Year Ending September 2023: How many people do we grant protection to?* (Official Statistics, 1 November 2023) 1 <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2023/how-many-people-do-we-grant-protection-to>.

¹²⁹ *An Inspection of Asylum Casework (June–October 2023)*, §7.79.

¹³⁰ UNHCR, Section 13: The Safe Country of Origin Concept in *The Safe Country of Origin Concept* (UNHCR, 2009), p. 39.

human rights claims by a specified date.¹³¹ Subsequently, any evidence provided after that date must come with a statement explaining why it was late and may be given minimal weight if no good reason is provided. Therefore, NABA does not remove the right to a substantive interview, yet it formalizes and limits the window for presenting evidence after the interview through these notices. In addition, the 2023 inspection revealed the existence of the Concise Interview Project (CIP) was introduced to facilitate more decisions being made on paper or to shorten subsequent substantive interviews where necessary. However, inspectors found its effectiveness was undermined by inadequate communication with decision-makers and stakeholders, as well as limited transparency from the team responsible for its rollout.¹³²

Staff were directed to complete ‘straightforward’ substantive interviews within two hours to improve efficiency and maintain focus. However, both staff and legal representatives raised concerns about this time limit. While a few considered it achievable in some cases, the majority of feedback was strongly critical. Staff highlighted that a fixed two-hour timeframe was often unworkable, given the diverse circumstances of applicants and the varying complexity of individual claims.

‘Staff felt under significant pressure to complete interviews within this time, which impacted on the quality of decisions being made. Legal representatives said they were seeing more appeals being lodged against refusals where poor-quality interviews had been conducted.’¹³³

However, a substantive interview can be rescinded in fast-track scenarios, where the Home Office considers the claim patently unfounded after reviewing documents. This is seen in practice when Besnik, an Albanian asylum applicant interview by the HBF, only discovered that his asylum claim had been *certified* in late 2023 but was not given notice of this. The Home Office had classified him as an ‘economic migrant’. However, he had never been interviewed, and the decision appears to have been made with minimal, if any, supporting evidence relying solely on a brief statement taken during his detention to support a bail application. Therefore,

¹³¹ Nationality and Borders Act 2022, s 18.

¹³² *An Inspection of Asylum Casework (June–October 2023)*, §1.24.

¹³³ *Ibid.*, § 1.40.

Besnik's case illustrates the barriers to receiving an individual assessment. Although, the percentage of applicants that are not eligible for a substantive interview is small, an applicant in any cases not being afforded an interview goes against UNHCR guidelines.

5.1.2 Impact of Operation BRIDORA

Furthermore, the 2023 ICIBI report suggests that although the current law may afford an individual initial assessment, Home Office policy may be implemented in contradiction to the UK's obligations. In reference to Operation BRIDORA, decision makers told inspectors:

'Responses to the inspection survey indicated that working exclusively on high-refusal rate nationalities had a negative impact on DMs' morale, as well as their ability to remain impartial. One DM described Op BRIDORA work as "demotivating" and said that they became "case hardened very quickly". This affected their interview style as they "came across stronger and more disbelieving of the claimant as they tell you the same claim as the last claimant"'¹³⁴

This supports the claim that the presumption of safety has created 'culture of disbelief' and a 'culture of refusal', by failing to offer additional training and lack of independent oversight. Indeed, in April 2023, the then Minister for Immigration, Robert Jenrick MP, issued a written ministerial statement confirming that human rights claims certified as *clearly unfounded* under Section 94 would no longer be subject to the "Second Pair of Eyes" (SPE) quality assurance process.¹³⁵ The repeal of this oversight illustrates the erosion of safeguards the presumption of safety creates. Therefore, some applicants will be subject to forced return based on a single opinion and no quality assurance mechanism.

In addition, applicants of clearly unfounded cases have limited suspensive appeal rights. This is concerning given the reported problematic 'case hardened' approach to decision making in the first instance.¹³⁶ In addition, the removal of the SPE quality assurance process for human rights claims fails to meet the requirements of states to establish objective and independent

¹³⁴ *Punishing the Victim*, p. 33 in *An Inspection of Asylum Casework (June–October 2023)*, §7.68.

¹³⁵ Robert Jenrick, Written Ministerial Statement: *Reforms to the Process of Certifying Claims as Clearly Unfounded* (HCWS716, 17 April 2023).

¹³⁶ *An Inspection of Asylum Casework (June–October 2023)*, §7.68.

monitoring mechanisms to oversee procedures on accelerated processes. This provision explicitly calls for mechanisms that are objective, independent, and empowered to monitor national law and practice, with the aim of safeguarding individuals against refoulement and ensuring access to protection.¹³⁷

5.2 Principle of Effectiveness (Efficiency vs. Protection)

In addition, other mechanisms have been employed to restrict access to effective asylum procedures. The NGO Free Movement has reported on the impact of changes to reporting procedure for Albanian applicants with the National Audit Office stating:

‘The Home Office now requires people from Albania who claim asylum to physically report to Home Office officials, and the Home Office will consider the person seeking asylum has withdrawn their claim if they do not turn up without a good reason.’¹³⁸

This change in policy was reflected in the change of immigration rules on 7 August 2023 under paragraph 333C(b) which sets out the circumstances in which it is appropriate to treat an asylum claim as withdrawn.¹³⁹ These changes added two rules: ‘(1) fails to attend any reporting events, unless the applicant demonstrates within a reasonable time that the failure was due to circumstances beyond their control; (2) fails to maintain contact with the Home Office or provide up to date contact details.’¹⁴⁰ Yet, the change in law was announced six months after the National Audit Office reported on this change in policy in April 2023.

¹³⁷ EC/GC/01/12, p. 9.

¹³⁸ Sonia Lenegan, ‘Is the Home Office unlawfully treating asylum claims as withdrawn?’ *Free Movement* (8 August 2023) <<https://freemovement.org.uk/is-the-home-office-unlawfully-treating-asylum-claims-as-withdrawn/>> in National Audit Office, *The Asylum and Protection Transformation Programme* (HC 1375, 15 June 2023) <https://www.nao.org.uk/wp-content/uploads/2023/06/the-asylum-and-protection-transformation-programme.pdf>, p. 38.

¹³⁹ UK Visas and Immigration, *Withdrawing Asylum Applications: Caseworker Guidance* (Guidance, 05 May 2023) <https://webarchive.nationalarchives.gov.uk/ukgwa/20230718000247/https://www.gov.uk/government/publications/withdrawing-asylum-applications>.

¹⁴⁰ *Ibid*, p. 8 and Lenegan, ‘Is the Home Office unlawfully treating asylum claims as withdrawn?’

Although, the reporting procedures and circumstances of withdrawal are matters for domestic law not international, it does raise questions on the balance of efficiency over protection, by attempting to reduce the backlog of applications in this way. Although, a streamlined process is not in itself problematic, the UNHCR guidelines state they must maintain access to information for the applicant. Both HBF and Free Movement have documented the impact the changes to reporting procedures had, specifically on Albanian applicants who were subject to the reformed rules before their official publication.

Both organisations have documented cases of applicants not receiving the letter or being too fearful to report in person rather than then phone due to their particularly precarious position for applicants from SCOs (i.e. detention and removal). This directly correlates with a 79% decrease in applications, and Albanians being the nationality with the highest number of withdrawals.¹⁴¹ Admittedly, this data is not conclusive and there may be other reasons for the high number of Albanian withdrawals, yet there is a clear issue with access to information on reporting procedures, which is concerning within the context of limited procedural safeguards for applicants from SCOs.

In fact, the ICIBI report states the political will at a ministerial level to clear more than 12,000 Albanian claims through Operation BRIDORA had led to staff and consultants to argue it delayed the processing of claims for another nationalities. Rather the report suggests ‘many of the issues encountered, such as requirements for additional training, SPE checks, and the large number of claims withdrawn (which raised separate concerns) were foreseen by staff’.¹⁴² Yet, the Home Office did not consider these concerns. Furthermore, the limited number of Albanian nationals removed from the UK on charter flights (245 by 13 November 2023) prompted inspectors to question whether focusing resources on this specific group, rather than addressing the wider legacy backlog, had achieved the intended results.¹⁴³

¹⁴¹ Lenegan, *‘Is the Home Office unlawfully treating asylum claims as withdrawn?’*.

¹⁴² *An Inspection of Asylum Casework (June–October 2023)*, §1.20.

¹⁴³ *Ibid.*

5.1.1 Efficiency in Home Office decision-making

As highlighted in the literature review, efficiency forms the main foundation for states to implement SCO and other related accelerated asylum procedures. With the UK's large backlog of 97,170 asylum claims (as of September 2024) it is clear with it would be politically attractive to implement accelerated procedures.¹⁴⁴ This was emphasised by the UNHCR who recommended that the Home Office develop and implement a triage and prioritisation system as soon as possible. This could include increased use of pre-filled decision templates, particularly for high-grant countries; deciding more claims on paper without interviews where appropriate; and introducing separate case 'tracks' such as manifestly unfounded, manifestly well-founded, and atypical claims, to better organise and prioritise case handling.¹⁴⁵

Yet, any triaging must be implemented in a way that is procedurally fair, with a *certification* based solely on country of origin and no individual assessment, and reducing applications by implicit withdrawal, not being in line with the UK's obligations. Although the ICIBI report highlights that Op BRIDORA sat 'very clearly at the top of the tree' in terms of ministerial priorities, the report highlights the operation 'demonstrated a lack of understanding of how Asylum Operations functioned, leading to a loss of quality assurance, productivity, and morale among teams.'¹⁴⁶

As of the latest report published in February 2024 the Home Office reported that 15,955 decisions had been made on Albanian asylum claims. Of these, 61.8% (9,863) were withdrawals, 28.5% (4,549) were refusals, and only 3.1% (498) resulted in a grant of asylum or another form of leave.¹⁴⁷ Admittedly the long-term effects of using the *manifestly unfounded* track are yet to be understood because not enough time has passed. Yet one thing is clear, its

¹⁴⁴ Home Office, *Immigration System Statistics, Year Ending September 2024: How Many Cases Are in the UK Asylum System?* (Official Statistics, 28 November 2024) <https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-september-2024/how-many-cases-are-in-the-uk-asylum-system>.

¹⁴⁵ UNHCR, *Guide to Asylum Reform in the United Kingdom* (23 February 2021) §7 <https://www.unhcr.org/uk/media/unhcrs-guide-asylum-reform-united-kingdom-0>.

¹⁴⁶ *An Inspection of Asylum Casework (June–October 2023)*, § 7.60.

¹⁴⁷ *Ibid.*, § 7.61.

current implementation reduces procedural safeguards for applicants based on their country of origin.

A clear example of this is that initially inspectors found that Op BRIDORA's progress was hindered by delays in completing SPE checks on decisions to certify claims, due to a shortage of accredited technical specialists. Therefore, on 17 April 2023, the Minister of State for Immigration announced in a written parliamentary statement that SPE checks would no longer be required for claims certified as clearly unfounded under section 94.¹⁴⁸ This change aimed to streamline the certification process and expedite the removal of individuals with no basis to remain in the UK. The Home Office issued updated guidance the following day to reflect this policy shift, with the Chief Inspector writing:

*'Removing this measure was intended to speed up decision making, but risked decisions being made and served that had not undergone formal quality assurance. The potential impact of a certified refusal, which had no right of appeal, carried greater risk to the claimant.'*¹⁴⁹

5.1.2 Quality of Home Office decision-making

Additionally, under the normative framework, the Home Office must ensure that any efforts to speed up decision-making does not undermine quality. The 2023 inspection of asylum casework found 'Routine quality assurance on interviews and decisions has been sacrificed for increased productivity. This has the potential to add to the appeals queue as a result of poor-quality refusals.'¹⁵⁰ The inspection also found by placing greater importance on the quantity of decisions rather than their quality, almost half of appeals to the tribunals are

¹⁴⁸ UK Parliament, 'Reforms to the Process of Certifying Claims as Clearly Unfounded' (17 April 2023). <https://questions-statements.parliament.uk/written-statements/detail/2023-04-17/hcws716>.

¹⁴⁹ *An Inspection of Asylum Casework (June–October 2023)*, § 7.70.

¹⁵⁰ *Punishing the Victim*, p. 29.

successful. This means the Home Office spends £8m per day accommodating asylum seekers waiting for appeal outcomes.¹⁵¹

Ultimately, this proves counterintuitive. For example, if an Albanian applicant is not certified as ‘manifestly unfounded’ but still refused by Home Office, they receive access to appeal (over half of which are successful) which costs the state money. In fact, ICIBI stresses better quality decision making in the first instance, by reducing flawed credibility assessments and engagement with the specific facts of a case (which has been established are particularly attractive to overlook by case workers for SCO applicants) would promote efficiency. Rather ICIBI recommended that any training should take a ‘face behind the case’ approach, recognising that applicants should not be reduced to numerical targets.

Undoubtedly, more certifications of *manifestly unfounded* applications for Albanians would cut costs. However, the goal of efficiency does not reduce the UKs obligations established in the normative framework. Previously, to ensure a fair examination, under SPE process the Tech specs had responsibility for ‘signing off’ new and inexperienced decision makers, however in interview one stated ‘I think it has never been easier to be signed off because of the pressure to get things done. DMs have to do fewer things to get signed off.’¹⁵²

This is particularly concerning considering the NABA removed the right of appeal for *certified* claims, meaning that any decision to certify a claim made after 27 June 2022 no longer carries a right of appeal, even from abroad. Prior to April 2023, due to the significant consequences of a certified refusal, section 94 required that such decisions be authorised by an accredited caseworker. As noted in the ICIBI’s 2021 inspection of asylum casework, this accreditation involved technical specialists completing specialist training in non-suspensive appeals (NSA), yet the 2023 inspection report suggests this oversight on decision quality is being diminished.

¹⁵¹ *Punishing the Victim*, p. 29 found in Home Office, *Home Office Annual Report and Accounts: 2022 to 2023* (HC 1355, 19 September 2023)

https://assets.publishing.service.gov.uk/media/650879614cd3c3001468cc2e/Home_Office_Annual_Report_and_Accounts_22-23.pdf accessed 29 June 2025.

¹⁵² *An Inspection of Asylum Casework (June–October 2023)*, §10.12.

Indeed, stakeholders have raised concerns about the decline in the quality of decisions under Op BRIDORA. One stakeholder said:

*'We have seen a large number of asylum refusals which were very short, contained factual mistakes and had substandard consideration of evidence, including little to no engagement with expert medical and country evidence.'*¹⁵³

5.3 Procedural Fairness and the Right to an Effective Remedy

Along with the access to information, procedural fairness requires that asylum applicants are afforded a meaningful opportunity to present their claims, supported by adequate legal representation. The lack of access for protection seekers is not an experience unique to Albanian applicants, the current immigration and asylum legal aid system had been recognised as a 'legal aid desert'.¹⁵⁴ However, MiCLU has noted:

*'They nevertheless face specific challenges given the will to remove them from the UK: Whilst it is increasingly difficult for anyone to secure legal representation in the UK, Albanians face particular difficulties because of the nature of their cases. Any asylum claim for an Albanian...is unlikely to be successful without significant expert testimony to identify and explicate key risks and outline areas where the claimant's individual circumstances are at odds to the country guidance'*¹⁵⁵

Therefore, due to the fact applicants from SCOs are not afforded an in-country appeal, stakes are high if applicants cannot present their claim in a detailed and well-evidenced way which is difficult without legal guidance. In addition, the HBF highlight that their work with vulnerable applicants, such as VOT, takes time to build trust. Furthermore, 'reaching the point of a completed, high-quality, evidence-rich asylum claim is challenging. If asylum seekers are not supported to disclose relevant and important information and evidence it satisfactorily, a claim

¹⁵³ *Ibid.*, §10.35.

¹⁵⁴ *Punishing the Victim*, p. 24.

¹⁵⁵ *Punishing the Victim*, p. 24 from Migrant & Refugee Children's Legal Unit (MiCLU), *Risks to the Mental Health and Wellbeing of Albanian Asylum Seekers: Following Events at Brook House, on the Bibby Stockholm, and the Wider Hostile Context in Which Their Claims Are Being Examined* (Breaking the Chains, 2024) <https://miclu.org/assets/uploads/Brook-House-Albanian-asylum-seekers-mental-health-risks.pdf> p. 6.

or appeal is likely to be wrongly refused, leading to a higher rate of successful appeals and risks of serious harm through wrongful returns.¹⁵⁶ Therefore, this time-consuming process is not compatible with the accelerated procedure, reiterating the standards in the normative framework, in which the CoE resolution stresses that states ‘ensure that certain categories of persons be excluded from accelerated procedures due to the vulnerability of the persons concerned and the complexity of the case’.¹⁵⁷

HBF’s interview with Besnik reflects the procedural consequences of the presumption of safety.¹⁵⁸ Besnik, who received positive conclusive grounds decision confirming him to be a VOT in January 2024, had sought support from the HBF Housing & Welfare Team believing he had a pending asylum claim. Besnik only discovered that his asylum claim had been declared ‘void’ in late 2023 (without his knowledge) after his application for support was refused. The Home Office had classified him as an ‘economic migrant’. This occurred despite the decision-maker being clearly aware that Besnik was a potential VOT. However, by the time Besnik became aware of the refusal, the deadline to file an appeal had already passed, and he had no access to legal representation to pursue alternative remedies.

This case reflects the deficiencies in the current procedure which prioritises reducing case back log over implementing safeguards. Within the reports, Besnik’s case is not isolated, and it reflects the lack of access to information and legal representation which limits the applicant’s ability to fulfil their right to an effective remedy. Indeed, the Public Law Project has stated ‘As many of these case studies demonstrate, reaching the point of a completed, high-quality, evidence-rich asylum claim is challenging’, particularly with the increased burden of proof from the presumption of safety.¹⁵⁹

¹⁵⁶ *Punishing the Victim*, p. 25.

¹⁵⁷ Council of Europe, Resolution 1471, §8.11.

¹⁵⁸ All names of interviewees were changed before reports were published for reasons of anonymity.

¹⁵⁹ *Punishing the Victim*, p. 25.

5.4 Non-Refoulement and Protection from Harm

As previously noted, both the relevant literature and international standards highlight the risk of refoulement in the implementation of accelerated asylum procedures. The 2025 Border Security, Asylum, and Immigration Bill (BSAI Bill), currently progressing through Parliament, repeals most of the IMA yet but six provisions remain, including those relevant to Clause 5. Clause 5(4) states that individuals from EEA countries, as well as Switzerland and Albania, cannot be removed to their country of nationality, citizenship, or the country that issued their passport if they have submitted a protection or human rights claim and there are “exceptional circumstances” preventing their removal.¹⁶⁰ Clause 5(5) provides two examples of what might qualify as “exceptional circumstances,” such as if the destination country is temporarily suspending its obligations under ECHR. Apart from these examples, the determination of what qualifies as “exceptional circumstances” is left to the discretion of the Secretary of State. Some of the measures in Clause 5 remain in the remaining section 59.

Indeed, the Joint Committee on Human Right Legislative Scrutiny suggest that the risk of UK breaching of the principle of non-refoulement in circumstances where individuals may face a real risk of persecution or a violation of their Convention rights upon return may be low in regard to EEA nationals, the risk remains for ‘Albanian women and children, many of whom have successfully claimed asylum in the UK to date.’¹⁶¹ Although, removals to EEA countries of origin, as well as Switzerland and Albania, will be blocked if individuals submit protection or human rights claims and the Secretary of State determines that “exceptional circumstances” apply. However, the Joint Committee determined this does not provide an adequate safeguard, as the threshold is both highly subjective and set at a demanding standard, making it difficult for individuals to meet.¹⁶²

These implications are particularly concerning for Albanians. For instance, under the Bill, an Albanian woman trafficked to the UK who faces a genuine risk of reprisals or re-trafficking if

¹⁶⁰ *Illegal Migration Act 2023*, c 37.

¹⁶¹ Joint Committee on Human Rights, *Legislative Scrutiny: Illegal Migration Bill* (HL Paper 142, HC 1210, 11 June 2023) <https://committees.parliament.uk/publications/40298/documents/196781/default/>, p. 52.

¹⁶² *Ibid.*

returned could still be removed to Albania, unless she is able to establish “exceptional circumstances” as defined at the discretion of the Secretary of State.¹⁶³ Meanwhile, the Home Office’s statistics before the introduction of the IMA on grant rates for Albania show that the grant rate for Albanians in 2022 was 49% (for Albanian women and children it was 87%).¹⁶⁴ Subsequently, the guidance and decisions of UK courts recognise that certain groups of Albanian citizens may be at risk of persecution.

The report from the Joint Committee records that in their letter to the Home Secretary they asked:

“On what basis has Albania been designated as safe given the significant number of Albanian women and children who have been granted asylum in the UK? Given the absence of any individualised assessment of Albanian asylum or human rights claims, does this not run a very real risk of breaching the prohibition of refoulement?”

She responded: “Albania is generally considered a safe country and people should not be risking their lives travelling from there to reach the UK to claim asylum...No one will be returned or removed to a country where they may be persecuted. This is in keeping with our obligations under Article 33 of the Refugee Convention.”¹⁶⁵

5.4.1 Suspensive and Non-suspensive Appeals

Furthermore, as previously discussed the 2022 NABA limits procedural rights. It removes the in-country right to appeal for any protection claim certified as ‘clearly unfounded.’ This applies regardless of whether the claim is based on asylum or human rights grounds. The implications of this mean appeal rights are lost and forced removal is possible.

¹⁶³ *Ibid.*, p.53.

¹⁶⁴ *Ibid.*, p. 53 from Home Office, National Statistics, How many people do we grant protection to? Published February 2023 ‘Outcomes of asylum applications’, Section 3.1 ‘At Initial Decision’.

¹⁶⁵ *Ibid.*, p.53 from Rt Hon Suella Braverman KC MP, Letter to Joanna Cherry KC MP, Chair of the Joint Committee on Human Rights, regarding the Illegal Migration Bill (4 April 2023)
<https://committees.parliament.uk/publications/39134/documents/192432/default/>.

This is demonstrated in practice by an interview of Hasan by the Public Law Project, a victim of male trafficking. Under section 94, the Home Office refused Hasan’s asylum, protection and human rights claims and certified that they were ‘clearly unfounded’. As a result of Hasan had no right of appeal against that decision and was liable to be returned to Albania after the ‘recovery period’ of thirty days. Previously in 2016, Hasan had been referred to the National Referral Mechanism (NRM) and received a positive conclusive decision in 2019. This threat of being returned to Albania was only appealed after intervention from the Shpresa Programme, a charity that promotes the participation and contribution of the Albanian-speaking community in the UK.¹⁶⁶

Within this programme, Hasan was able to build trust with a solicitor over a four-week period allowing for a new asylum claim to be lodged. This application was successful after ‘painstaking work by his solicitors over many months to produce accurate and meaningful legal submissions’, resulting in being granted asylum after a three-year process and seven years in the UK.¹⁶⁷ This case of Hasan offers an example of the difference in outcome access to legal representation can make. Concerningly, without charity-led intervention Hasan would have been removed to Albania with no right to in-country appeal.

5.5 Rebuttable Presumption and Protection of Vulnerable Groups

The Public Law Project has stated that ‘The Home Office’s ability to adequately identify asylum seekers requiring additional support has long known to be patchy.’¹⁶⁸ Although, the Home Office does carry out an initial ‘screening interview’ before the main ‘asylum interview’ to identify any additional needs the asylum seeker may have, such as housing, financial assistance, or mental health support. This process may include referrals to appropriate support services. However, the ICIBI, in the 2018 inspection of asylum casework, observed that the Home Office’s approach was often shaped more by the personal attitudes of individual

¹⁶⁶ For more information see Shpresa Programme, *About: Inspiring Hope & Change for Albanian-Speaking Migrants in the UK* (Charity website, accessed 16 June 2025) <https://shpresaprogramme.org>.

¹⁶⁷ *Punishing the Victim*, p. 16.

¹⁶⁸ *Ibid.*, p.26.

caseworkers than by any consistent training or overarching strategy.¹⁶⁹ The discretion left to individual caseworkers proves particularly problematic considering the mentality of a ‘culture of disbelief’.¹⁷⁰

Furthermore, in 2021 the Home Office did introduce standardised training for identifying vulnerability, but there is still no data on the ‘the scale of the met and unmet need’.¹⁷¹ However, the 2023 report suggested there was no indication that cases were prioritised based on vulnerability, and since the Home Office did not gather data on individuals’ vulnerabilities, it lacked a system to do so within adult casework. In contrast, children’s cases were prioritised according to how long they had been pending, with some consideration given to vulnerability and welfare needs.¹⁷² In response, the Chief Inspector commented that it was ‘inexcusably awful’.¹⁷³

Ultimately, the relatively new introduction of a standardised approach to vulnerable victims impacts all protection seekers, not specifically those from designated SCOs. Yet, identifying those vulnerable at the initial ‘screening interview’ is vital for claims from SCOs that can be certified under section 94. This is because the individual removal can be rapidly enforced, sometimes before full disclosure of vulnerabilities (e.g., trauma or trafficking history) is possible. In addition, as previously discussed access to legal aid or representation is often limited. This disproportionately harms vulnerable individuals who may need more time and support to explain or document why their case is an exception to the general presumption. The failure of the UK SCO policy to do this fails to adhere with the CoE resolution stresses that states ‘ensure that certain categories of persons be excluded from accelerated procedures due to the vulnerability of the persons concerned and the complexity of the case’.¹⁷⁴

¹⁶⁹ Independent Chief Inspector of Borders and Immigration, *An Inspection of the Home Office’s Management of Asylum Accommodation Provision* (20 November 2018).

¹⁷⁰ Freedom from Torture, *Lessons Not Learned: The Failures of Asylum Decision-Making in the UK* (September 2019) https://www.freedomfromtorture.org/sites/default/files/2019-09/FFT_LessonsNotLearned_Report_A4_FINAL_LOWRES_1.pdf p. 19.

¹⁷¹ *An Inspection of Asylum Casework (June–October 2023)*, §1.26.

¹⁷² *An Inspection of Asylum Casework (June–October 2023)*, §1.26.

¹⁷³ *Ibid.*, §9.54.

¹⁷⁴ Council of Europe, Resolution 1471, §8.11.

As established in the normative framework, in order for accelerated procedures to be compatible with international standards states must ‘ensure that the burden of proof does not switch to the applicant to prove that a country is unsafe, and that the applicant has an effective opportunity to rebut the presumption of safety.’¹⁷⁵ This is reiterated in a report from the Joint Committee on Human Rights Legislative Scrutiny, ‘whilst the states listed... may be considered to be safe ‘in general’, this does not guarantee their safety for all individuals, particularly those who are members of a particular social group’.¹⁷⁶

One group explicitly mentioned in *UNHCR Handbook on Procedures and Criteria* is LGBTIA+ individuals who ‘Due to their often complex nature, claims based on sexual orientation and/or gender identity are generally unsuited to accelerated processing or the application of SCO concept.’¹⁷⁷ Indeed, this was echoed in a recent case from the Upper Tribunal, *XL & SG v. SSHD*. In this case the Judge allowed the appeal on both protection and human rights grounds and that the Applicants ‘have a well-founded fear of persecution in Albania on account of their membership of two particular social groups – former victims of trafficking and lesbians.’¹⁷⁸

The Judge’s reasoning highlighted the CPIN ‘Albania: sexual orientation and gender identity and expression’ which states ‘Albania is a patriarchal, conservative society in which homophobic attitudes still exist, particularly in rural areas. Although protection from discrimination is provided for in law, in practice, NGOs report that the collective LGBTI community face difficulties in accessing education, employment, housing, healthcare and goods and services due to prevailing negative attitudes of LGBTIA+ persons in Albanian society.’¹⁷⁹ Furthermore, the Judge determined protection was insufficient and internal relocation was not possible. This was considered holistically with the circumstances were also VOT and faced re-trafficking with ‘women and girls identifiable as victims of trafficking may

¹⁷⁵ *Ibid.*, §8.2.2.

¹⁷⁶ Dismissing Risk, p. 8 from Joint Committee on Human Rights Legislative Scrutiny: Illegal Migration Bill Twelfth Report of Session 2022–23, June 2023, p. 53.

¹⁷⁷ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention, p. 180.

¹⁷⁸ UI-2024-005220 & UI-2024-005224 (UT IAC, unreported, 26 March 2025) (lesbian trafficking victims from Albania) §31.

¹⁷⁹ UK Home Office, *Country Policy, and Information Note – Albania: Sexual Orientation and Gender Identity and Expression* (Version 7.0, December 2022) § 2.4.15.

face discrimination from societal actors, because of their gender and the fact that they have been trafficked.’¹⁸⁰

In addition, another notable country guidance case was *BF* which found that an openly gay man would not have an objectively well-founded fear of persecution or serious harm on return to Tirana.¹⁸¹ In this case it was determined that Albania ‘generally effective system of protection’ and therefore ‘it will not be unduly harsh for an openly gay man to relocate to Tirana’.¹⁸² However, it does note ‘each case must be assessed on its own facts, taking into account an individual’s particular circumstances’, which is expressed in the latter case of *XL & SG*.¹⁸³ Notably, it is not the aim of this thesis to determine the safety of Albania as a whole nor for specific groups, but rather the effect of the general presumption of safety. These two cases illustrate the importance individual examination, and the incompatibility of blanket assumptions with effective asylum proceedings.

Moreover, although the recent case of *XL & SG* suggests the presumption of safety is in practice rebuttable, however, it does not reflect the widespread procedural issues for applicants. This is evident in the case study of Timi, a gay adolescent male from a small village in northern Albania. After experiencing harassment and discrimination, he was smuggled at age 17 into the UK. After finding a solicitor through another member of the Albanian community, he was not updated on the process. Timi’s claim was certified “clearly unfounded” by the Home Office under section 94, but it took ‘18 months from submission of his claim for them to advise him that his claim had been refused.’¹⁸⁴ Being subject to removal, ‘Timi avoided all contact with the authorities and survived by working on building sites for a meal and slept in houses that were half built.’¹⁸⁵ He was then arrested and detained, and only received legal representation after his boyfriend took out a loan of £4000 to secure a solicitor, because ‘he was not able to find a legal aid solicitor at that time without an extensive waiting list.’¹⁸⁶

¹⁸⁰ UI-2024-005220 & UI-2024-005224, §29 from CPIN *Albania: Sexual Orientation and Gender Identity and Expression* (Version 7.0, December 2022) §5.1.1.

¹⁸¹ *BF (Tirana – gay men) Albania* [2019] UKUT 0093 (IAC).

¹⁸² *Ibid.*, §4.

¹⁸³ *Ibid.*, §6.

¹⁸⁴ *Punishing the Victim*, p. 13.

¹⁸⁵ *Ibid.*, p. 13.

¹⁸⁶ *Ibid.*, p. 14.

During his time in detention Timi was so fearful of being returned to Albania that he attempted suicide twice by hanging. It was only after his case was taken up by the Islington Law Centre, a new application was lodged and Timi was granted asylum. This case illustrates the real implications of the presumption of safety under section 94. If the removal was enforced, it is unlikely Timi would have been able to submit an out-of-country appeal. In addition, it is clear the process failed to take into account the vulnerability of the applicant (e.g. age and sexuality) showing the dangers of an accelerated *certification* procedure. Moreover, the case highlights the extensive access of resources needed to rebut this presumption. Timi's position of a loved-one borrowing money for legal expenses and support from the Islington Law Centre and Shpresa Programme will often not be available to the majority of applicants.

5.6 Conclusion

The mere fact that clause 59 of the IMA is yet to be repealed highlights the divergence between UK policy and international standards on the implementation of accelerated asylum procedures. Although not currently being enforced, current policy such as Op BRIDORA indicate an erosion of access to an individualised assessment. Moreover, current legislation does afford most applicants the right to a substantive interview, but the discretion for decision makers to rescind this right for certain applicants proves at odds with UNHCR guidance.¹⁸⁷

In addition, the material examined present concerns of the changes to the reporting procedure disproportionately impacting Albanian applicants. Indeed, the National Audit Office confirming that Albanians have been subject to these changes before the law was announced, indicates an issue with access to information.¹⁸⁸ These changes arose to reduce backlog, and although a streamlined process in itself is not problematic, UNHCR stresses that applicants must be informed. Therefore, relying on implicit withdrawals goes against UNHCR recommendations. Regarding efficiency of decision making, there is currently not enough data to understand whether triaging using the 'manifestly unfounded' track has sufficiently reduced

¹⁸⁷ UNHCR, *Section 13: The Safe Country of Origin Concept*, p.39.

¹⁸⁸ in National Audit Office, *The Asylum and Protection Transformation Programme* (HC 1375, 15 June 2023), p. 38.

backlogs. However, the 2023 inspection of asylum casework did reveal a decrease in decision making quality due to targets set by Op BRIDORA, as well the reduction of SPE checks. As a result, more than half of appeals lodged are successful. These findings indicate that in the implementation of accelerated procedures the Home Office efforts to speed up decision-making is undermining quality, worsened by the roll back of independent oversight mechanisms.

Furthermore, the research suggests that SCO applicants face issues regarding procedural fairness and the right to an effective remedy, particularly regarding access to legal representation. Admittedly this effects most asylum seekers, however the MiCLU has identified that the presumption of safety implicitly creates a higher burden of proof, meaning applications hinge on having access to experienced legal representation. This is vital with the consequences of non-suspensive appeals.

Accordingly, this chapter has examined the UK's designation of Albania as a SCO and its implications for the right to an effective asylum procedure. While rebuttal of the safety presumption is possible in law, as illustrated in *XL & SG*, in practice systemic barriers such as limited access to legal representation, insufficient screening for vulnerability, and the use of accelerated procedures undermine applicants' ability to meaningfully challenge certification under section 94. Vulnerable groups, particularly LGBTIA+ individuals and trafficking survivors, are disproportionately affected by these shortcomings. As the Public Law Project and oversight bodies like ICIBI have observed, the Home Office's discretionary and inconsistent practices in identifying support needs further weaken procedural safeguards.¹⁸⁹ In light of international standards, including UNHCR guidance and the CoE Resolution, the UK's implementation of the SCO framework in Albanian cases falls short of the guarantees required for fair and individualised asylum assessments.

¹⁸⁹ Marsons, 'Punishing the Victim protect' (Public Law Project, 28 February 2025) and ICIBI, *An Inspection of Asylum Casework (June–October 2023)* (GOV.UK, 29 February 2024).

Chapter 6: Interrogating the Presumption: Findings from UK Tribunal Decisions on Albanian Asylum Claims

Chapter 6 will form the second part of the two-tiered analysis of this thesis. While the previous chapter provides insight into earlier stages of the process such as initial decisions, and Home Office procedures, areas largely invisible in Upper Tribunal (Immigration and Asylum Chamber) case law. The case analysis has allowed for a more precise examination on understanding legal reasoning, such as application of the burden and standard of proof, evaluating credibility assessments and use of country information. Indeed, comparing UT decisions across cases can expose inconsistencies in decision-making, variations in how SCO-related presumptions are applied, or systemic challenges faced by claimants. In addition, UT decisions often address procedural flaws in First-tier Tribunal (FtT) hearings (e.g., failure to consider medical evidence or vulnerability) and can highlight access to justice concerns. This forms a vital part in answering the research question.

The cases analysed had to fit the established criteria (*see methodology*), subsequently they were chosen from the established period of October 2024 to March 2025 to allow for the most up-to-date information. Moreover, the cases had to be regarding an Albanian applicant seeking asylum. In UK practice, an asylum claim automatically includes consideration of both refugee status and humanitarian protection. Therefore, there is no need to submit separate applications. If refugee status is refused, decision-makers must go on to assess whether the applicant qualifies for humanitarian protection. So, although the cases chosen are submitting asylum claims, most also include additional protection claims. Through these criteria emerged 33 viable cases to form the base for the thematic analysis.

The King's Template Analysis calls for a combined use of allows for both *a priori* (deductive) and *emergent* (inductive) codes.¹⁹⁰ Therefore the thematic coding was guided by the literature which highlighted concerns of high burden of proof, adverse impacts on vulnerable groups, as well as flawed credibility and lack of individual assessment. This literature, as well as the

¹⁹⁰ Nigel King, 'Using Templates in the Thematic Analysis of Text' in Cathy Cassell and Gillian Symon (eds), *Essential Guide to Qualitative Methods in Organizational Research* (SAGE Publications 2004).

normative framework, served to guide the coding. However, the important part of Kings Template Analysis is that it allows for *emergent* codes that fall outside the established literature and normative framework. Following the thematic analysis of these cases, three ‘high order’ or ‘top-level’ themes were identified: (1) Evidentiary Burden (2) Barriers to Credibility; and (3) Flawed Application of Country Evidence.

Contextually, protection cases in the UK asylum system broadly include claims for refugee status under the Refugee Convention, humanitarian protection under domestic and international law, and human rights claims, particularly those grounded in Articles 2, 3, and 8 of the European Convention on Human Rights (ECHR). While these categories are legally distinct, they often arise from the same set of facts and engage overlapping risks related to serious harm, persecution, or degrading treatment. For example, a claimant fleeing gender-based violence may simultaneously raise a refugee claim based on membership of a particular social group and human rights claim under Article 3 ECHR due to the risk of inhuman or degrading treatment on return. Given this overlap, it is both legitimate and necessary to consider these forms of protection collectively in legal and procedural analysis. This approach reflects the reality of how such claims are presented and assessed in practice and allows for a more holistic understanding of how UK law, policy, and procedure interact to either provide or deny protection.

Furthermore, the UT is a senior judicial body within the UK's immigration and asylum system that hears appeals on points of law arising from decisions made by the FtT. Its primary function is to ensure legal consistency and oversight by reviewing whether the FtT correctly interpreted and applied the law. The UT does not usually re-hear the entire case or reassess factual evidence unless a legal error affected the original findings. It may set aside decisions of the FtT if it finds they are legally flawed, and either remake the decision itself or remit the case for a new hearing. As such, the UT plays a critical role in clarifying legal principles, ensuring fairness, and shaping the development of immigration and asylum law in the UK.

6.1 An Evidentiary Burden? Standard of Proof for Albanian Appellants

The 2022 NABA served to increase the standard of proof for asylum claims. Before the Act, claimants needed only to show a ‘reasonable degree of likelihood’ that they would face persecution, a deliberately low threshold established in *Sivakumaran*, and accepted by the Home Office due to the serious risks involved and the difficulty many asylum seekers face in providing extensive evidence.¹⁹¹ However, in practice, this standard was often applied more strictly. The 2022 Act formalises this shift by introducing the higher civil standard of proof ‘on the balance of probabilities’ requiring asylum seekers to show that their claims are more likely than not to be true.

The raised standard of proof presents significant challenges for all asylum seekers, particularly in light of the well-documented effects of trauma on memory, the common difficulties in obtaining objective evidence from countries of origin, and the numerous obstacles claimants face when trying to collect supporting evidence within the UK.¹⁹² Indeed, the increased standard of proof (which departed from 34 years of precedent) has been criticised by scholars and civil society, stated in a letter with 100 signatories ‘The Nationality and Borders Bill stands in violation to the UK’s commitment to the 1951 Geneva Refugee Convention. It is an expansion of a violent system that dehumanises the most vulnerable, excludes ‘undeserving’ others and will effectively make the Government unchallengeable and refuge and asylum practically impossible.’¹⁹³

Moreover, literature has highlighted the how this change in law has impacted specific groups, such as the LGBTQIA+ community. Powell and Rifath argue ‘the nature of sexually diverse claims means that claimants often have very limited access to the ‘objective’ tangible evidence expected by the Home Office. This results in their claim heavily relying on their oral testimony and narrative during their substantive asylum interview. The centrality of narrative evidence to

¹⁹¹ *R v Secretary of State for the Home Department, ex parte Sivakumaran and conjoined appeals* [1988] AC 958 (HL).

¹⁹² Alex Powell and Raawiyah Rifath, ‘Sexual Diversity and the Nationality and Borders Act 2022’ (2023) 43 *Legal Studies* 757, 760.

¹⁹³ *R v Secretary of State for the Home Department*.

asylum claims is why it is so important that there is a low standard of proof that is analytically separate from the assessment of credibility.’¹⁹⁴ However, there has been limited focus on the impact on applicants from SCOs, who already face the high evidentiary burden to rebut the presumption of safety.

6.1.1 *Standard of Proof in the Cases*

Due to the period examined, the cases present appellants subject to the pre and post 2022 standard of proof. The cases exhibit a clear divide in the success of the appeals, with those submitted prior to 2022 subject to the lower standard of proof more likely to be granted protection, although this is to be expected. For example, take the case of Appellant (*LB*), a minor at the time of being trafficked to the UK to work on a cannabis farm to pay off his father’s debts. While it was not in dispute that *LB* was a VOT, it was contested whether the applicant was a part of a particular social group (PSG) and at risk on return to Albania. Regarding the ‘the protected characteristic condition’, the FtT agreed being a male VOT fulfilled the condition, but disagreed that ‘the social perception condition’ was met.¹⁹⁵ Whereas, although the UT Judge agreed regarding ‘the social perception condition’ the evidence was ‘not strong’, yet argued the evidence ‘points to there being a distinct possibility that the condition is met’ meeting the lower standard of proof.¹⁹⁶ Moreover, the although the applicant’s claims of threats ‘is extremely difficult to evaluate’, again the UT Judge determined it fulfilled the low standard of proof of ‘reasonable likelihood’.¹⁹⁷ This case presents in stark contrast to cases which apply the post-2022 standard, which this case would likely have not been successful if subjected to.

Moreover, the difference in outcomes pre and post 2022 is illustrated in the case of *KR*, an applicant that faced similar circumstances to that of *LB*. Like *LB*, the applicant *KR* was targeted and trafficked by a criminal gang to pay of his father’s debts. Similarly, *KR* received threats to his family home, and filed an asylum claim as a member of a PSG (victim of male

¹⁹⁴ *Powell and Rifath*, p. 760.

¹⁹⁵ UI-2023-003424 (UT IAC, unreported, 30 January 2025) §12.

¹⁹⁶ *Ibid.*, §14.

¹⁹⁷ *Ibid.*, §23.

trafficking).¹⁹⁸ However, the difference between the two cases is that as the asylum claim was made on or after 28 June 2022, section 32 of the 2022 NABA applies.

Therefore, the regarding the first stage the UT Judge considered whether appellant has established on the balance of probabilities that he has a characteristic which could cause him to fear persecution. Both cases refer to similar evidence on ‘the stigma and shame a potential male victim of trafficking would feel would further mark him out within the wider society’, referencing the 2024 CPIN on Albanian Human Trafficking¹⁹⁹ While, both judges also regard the evidence of male VOT as fulfilling ‘the social perception condition’ as limited, in *LB* the standard was satisfied with there ‘being a distinct possibility that the condition is met.’²⁰⁰ Whereas, the Judge in *KR* determined ‘The appellant has not established on the balance of probabilities that he has a characteristic which could cause him to fear persecution for a convention reason based on or his membership of a particular social group. The asylum claim falls at the first hurdle of s.32(2) (a) of the 2022 Act.’²⁰¹

While in the case of *LB*, regarding whether the applicant’s family has received threats at their home, the UT Judge determined ‘It is extremely difficult to evaluate whether the appellant is telling the truth about the gang regularly visiting his family home. He may well be making this up. However, equally, he could be telling the truth.’²⁰² Rather, in *KR* the UT Judge argues that ‘While I accept the credibility of the appellant’s evidence about what he was told by his sister, there are limits to the weight this double hearsay can bear.’²⁰³ This is another stark difference in how the higher standard of proof plays out in these cases. Despite very similar circumstances *LB*’s asylum claim was successful, while *KR*’s asylum and subsidiary protection claims were dismissed.

In only three cases the UT Judges determined the FtTJ had applied the incorrect standard of proof. This was highlighted in the case of a trafficked Albanian male, in which the FtTJ

¹⁹⁸ UI2024-001015 (UT IAC, unreported, 11 October 2024).

¹⁹⁹ *Ibid.*, §22.

²⁰⁰ UI-2023-003424., §14

²⁰¹ UI2024-001015, §23.

²⁰² UI-2023-003424, §23.

²⁰³ UI2024-001015, §18.

‘rejected the medical evidence lends weight to the error alleged in ground one, that is that the judge applied a higher standard of proof than that required.’²⁰⁴ Furthermore, the UT Judge highlighted that the FtTJ stating they were ‘unconvinced’ indicated a higher standard was applied.²⁰⁵ Therefore the UT Judge determined:

‘The errors made by the judge in his employment of too high a standard, his rejection of the country report, corroborative evidence relating to the blood feud and the medical evidence is material because if this evidence had been considered properly and fairly, in the round, it could have reasonably led to a different outcome of this appeal.’²⁰⁶

However, in the majority of cases the UT Judge found that the FtTJ had applied the standard of proof as prescribed by law. For the most part, in the facts of the case most judges indicated what standard would be applied according to the application of asylum. A clear example of this is the case of *EM* in which the UT Judge states the FtTJ was also right to note that it was the appellant’s responsibility to explain and provide evidence as to why the various ‘layers’ of protection offered by the Albanian state (such as shelters, support services, and reintegration programmes) would not be accessible or effective in her case.²⁰⁷ In addition, the fact that the FtTJ applied the relevant Country Guidance is highlighted ‘The burden of proof remains on the appellant to prove why internal relocation within Albania would be unduly harsh’.²⁰⁸ Regarding this the UT Judge determined the FtTJ applied the relevant standard:

‘The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This was expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the appellant were to be returned.’²⁰⁹

²⁰⁴ UI-2024-001879 and UI-2024-002330 ((UT IAC, unreported, 8 November 2024) §26.

²⁰⁵ *Ibid.*, §26.

²⁰⁶ *Ibid.*, §27.

²⁰⁷ UI-2024-003115 (UT IAC, unreported, 23 January 2025) §37.

²⁰⁸ See MB (Internal relocation - burden of proof) Albania [2019] UKUT 392 (IAC).

²⁰⁹ UI-2024-003115, §55.

Indeed, in many of the cases the appellants appeal on grounds of the FtTJ applying the wrong standard of proof. However, apart from the three cases (as mentioned above), most were found to have applied the correct standard. This is illustrated in the case of *RG*, a female VOT. It was asserted that the FtTJ, having made a finding that ‘it is highly unlikely that he [the trafficker] would have permitted her the opportunity to escape’ had applied a higher standard of proof than the law calls for.²¹⁰ Indeed, the appeal was granted by the FtT as follows ‘As the application for asylum was made on 22 December 2022 it is arguable that the Judge has identified the wrong standard of proof in [28] by referring to the credibility of her escape as being “highly unlikely”.’²¹¹ This ground appears in 48.485% of the cases analysed, yet in the majority of case the UT Judge’s sentiment can be summed up as follows:

*‘There is no basis at all for considering that the judge failed to consider the appellant’s claim to the correct standard of proof.’*²¹²

6.1.2 Findings within the Normative Framework

Ultimately, the analysis reveals that in a majority of cases the FtTJ correctly identifies the correct standard of proof, with a few anomalies applying too high a burden of proof for appellants. Yet, the cases illustrate a difference in outcome for applicants pre and post 2022 change in standard. This indicates, although judges may be applying the relevant standard of proof, the law itself is problematic. Indeed, the UNHCR *Updated Observations on the Nationality and Borders Bill* expresses concerns with implementing a higher standard of proof used in civil litigation into the refugee determination process.²¹³ In addition, The UNHCR’s *Handbook on Refugee Status Determination* stresses that asylum claims must be assessed in ‘a spirit of justice and understanding’.²¹⁴ It recognizes the significant difficulties refugees face in providing evidence for their claims and advises that the burden of proof should be shared.

²¹⁰ UI-2024-004181 (UT IAC, unreported, 19 November 2024) §6.

²¹¹ *Ibid.*, §7.

²¹² *Ibid.*, §13.

²¹³ UNHCR, *Updated Observations on the Nationality and Borders Bill, as amended* (January 2022)

66 <https://www.refworld.org/legal/natlegcomments/unhcr/2022/en/123993>.

²¹⁴ *Ibid.*, p. 66 from UNHCR Handbook, § 202.

Furthermore, as established in the normative framework, Article 8.2.2 of the CoE resolution urges states to ‘ensure that the burden of proof does not switch to the applicant to prove that a country is unsafe and that the applicant has an effective opportunity to rebut the presumption of safety.’²¹⁵ This is not to suggest the standard of proof is ‘insurmountable for the asylum seeker’, yet it presents significant barrier.²¹⁶ This is echoed by the UNHCR concerns ‘that the approach proposed by the Bill will lead to refugees being denied asylum in error and opposes this clause’.²¹⁷ Asserting that ‘While various formulations have been used, it is clear that the standard required is less than the balance of probabilities required for civil litigation matters’.²¹⁸ Arguing instead, that the pre-2022 standard:

‘Is further consistent with UNHCR’s recommendations set out above in that it provides for a “positive role for uncertainty” and ensures that all of the evidence is given the weight due to it, including evidence about which the decision-maker cannot say that it is “probably true”. This reflects both the difficulties asylum-seekers have in proving their claims.’²¹⁹

Another, deficiency is the effect of a higher standard of proof on vulnerable applicants. In fact, 21 of the cases examined involved applicants considered vulnerable. Yet, the UNHCR highlights that the implementation of a higher burden of proof, removing some of the lower standards protective function. Despite this, its suggested ‘the ameliorative role it now performs could nonetheless be partially preserved through advanced training for decision-makers on the effects of trauma on memory...and the risks of imposing one’s own view of plausibility on events that occurred in a foreign country, and other factors that make proving asylum claims exceptionally difficult.’²²⁰ As further examined in the next section, the approach to vulnerable victims is inconsistent and fails to meet this normative standard.

²¹⁵ Council of Europe, Resolution 1471, 8.2.2.

²¹⁶ *Ibid.*, §72.

²¹⁷ *UNHCR Updated Observations on the Nationality and Borders Bill*, p. 69.

²¹⁸ *Ibid.*, p. 69.

²¹⁹ *Ibid.*, p. 68.

²²⁰ *Ibid.*, p. 69.

Ultimately, although the law itself proves in opposition to the normative standards established by the UNHCR and CoE, it applies to all nationalities regardless of country status. Furthermore, although the case analysis of this theme suggests FtTJ have been correctly identifying the correct standard of proof, judicial reasoning on credibility of Albanian applicants proves problematic. As examined in the next section, a burden higher standard of proof implicitly manifests as viewing of Albanian applicants through a lens of incredibility.

6.2 Barriers to Credibility

Credibility plays a central and often decisive role in asylum proceedings. Because many asylum seekers are unable to provide full documentary evidence, due to the urgency of fleeing or risk of persecution, a claim often hinges on whether the decision-maker finds the applicant's account to be believable. Furthermore, it forms part of the burden of proof; if the claimant is found credible, their statements may be sufficient to meet the burden of proof. Regarding this, UK tribunals are guided by case law and the Asylum Policy Instruction on Assessing Credibility and Refugee Status.²²¹ Key cases like *Karanakaran* state that decision-makers must assess credibility within the 'reasonable degree of likelihood' standard and not expect conclusive proof.²²²

Within the literature emerges concerns of the presumption of safety having a negative impact on the credibility of SCO applicants. Marsons argues Albanian applicants face 'flawed credibility assessments', by challenging an established narrative reinforced by an SCO designation.²²³ Subsequently, a central theme that emerged within the analysed cases was the scepticism of the appellants credibility.

Much of the implicit effects of the presumption of safety revolve around the issue of credibility of the applicant. This approach is encompassed in the FtTJ's statement 'The Appellant's

²²¹UK Visas and Immigration, *Assessing Credibility and Refugee Status in Asylum Claims Lodged on or after 28 June 2022*(Home Office Guidance V13.0, published 28 September 2023) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086137/Assessing_credibility_and_refugee_status_post_28_June_2022.pdf.

²²² *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11; [2000] 3 All ER 449.

²²³ *Punishing the Victim*, p. 30.

journey to the UK had the flavour of an economic migrant and not somebody fleeing persecution and fear of their life.’²²⁴ Therefore, the applicant’s circumstances were assessed through the lens incredibility. As a result, the UT Judge determined that the applicant’s circumstances were not considered as a whole and therefore ‘coloured the rest of the decision, including consideration of the appellant’s circumstances and his ability to internally relocate.’²²⁵

6.1.2 Credibility in the cases

Concerningly, a key theme was the FtTJ’s analysis of credibility, even if the credibility had been agreed on by the respondent and it was a non-issue. One clear example of this was a case of male trafficking. In this case, no credibility findings by the respondent had been raised in the refusal decision and his account was accepted by the single competent body. Moreover, the UT Judge emphasised that ‘In the decision letter, it is explicitly accepted by the respondent, that the appellant has given a consistent account of what happened to him in the cannabis factory and that his account is credible. This is also consistent with the fact that he has a positive conclusive grounds decision.’²²⁶ Yet, the FtTJ had focused on one piece of evidence, to undermine the applicant’s credibility as a whole. This was criticised by the UT Judge:

‘It was irrational for the judge to pick on this one additional piece of evidence (which is nor inconsistent in any way with anything he previously said) to decide that this undermined the appellant’s entire credibility which is what the judge has done.’²²⁷

In addition, the UT was concerned regarding the judge’s failure to factor in the appellant’s vulnerability. Meaning the negative credibility finding ‘clearly also impacted on the judge’s findings in respect of whether the appellant had contact with his family, his ability to support himself in Albania and his risk of being re-trafficked.’²²⁸ The failure to treat appellants credibility in context of being vulnerable victims constitutes a pattern within the cases

²²⁴ UI-2024-003073 (UT IAC, unreported, 2 October 2024) §6.

²²⁵ *Ibid.*, §12.

²²⁶ UI-2024-002214 (UT IAC, unreported, 23 October 2024) §17.

²²⁷ *Ibid.*, §22.

²²⁸ *Ibid.*, §33.

examined. The UT urges in *HK v SSHD* that great care should be taken before judging actions as implausible without first considering the appellant's social and cultural background. In addition, in *KB & AH* the UT affirmed that plausibility can be a valid factor in assessing credibility but emphasised that it must be applied with appropriate caution.²²⁹ However in 10 out of the 33 cases examined the factors of vulnerability and background are not present, summed up by one UT Judge:

*'That caution is absent from this part of the Judge's consideration, not only on the basis of the appellant's different cultural background but, more importantly, the appellant's status as a victim of abuse.'*²³⁰

In addition, the UT reaffirmed in one case that the FTT Judge was not: *'rationally entitled to assume such authority on how victims of abuse might think or behave, such as to place such adverse weight upon this part of the appellant's account.'*²³¹

Furthermore, in order to comply with the Joint Presidential Guidance, it is necessary for an appellant's vulnerability to be taken into account by the Judge when assessing the credibility of their evidence.²³² As clarified in *AM (Afghanistan)*, this assessment must form part of a holistic evaluation of the appellant's evidence. The medical evidence providing a possible explanation for inaccuracies should be integrated into the overall credibility assessment, rather than treated as a separate or additional consideration.²³³

This lack of holistic credibility assessment was highlighted in a case of an Albanian male seeking protection from criminal gangs. In this case the UT Judge found that in the FtTJ failing to look 'through the lens of the medical evidence, the judge has in my judgement failed to take into account other aspects of the appellant's evidence relevant to his credibility and failed to

²²⁹ *KB & AH (credibility-structured approach: Pakistan)* [2017] UKUT 491 (IAC).

²³⁰ UI-2024-003486 (UT IAC, unreported, 25 October 2024) §14.

²³¹ *Ibid.*, §15.

²³² The Hon Mr Justice Blake and Miss E Arfon-Jones DL, *Joint Presidential Guidance Note No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance* (First-tier Tribunal Immigration and Asylum Chamber, 30 October 2008) <https://www.judiciary.uk/wp-content/uploads/2014/07/ChildWitnessGuidance.pdf>.

²³³ *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123.

look at the matter in the round.’²³⁴ Therefore, it was in this context the FtTJ made his findings on sufficiency of protection and internal relocation which the UT Judge found this ‘error infected his assessment of the appellant’s circumstances on return.’²³⁵ This is problematic because it undermines the fairness of the decision-making process, particularly for vulnerable individuals whose credibility may be unfairly questioned due to the effects of trauma or mental health conditions, ultimately increasing the risk of wrongful refusal and refoulement.

The failure to consider the vulnerability of the applicant in assessing the credibility of the protection claim can be seen in relation to the view that the risk when being returned to Albania would be low. The interconnectedness of these narratives can be seen in judges’ dismissal of ‘unchallenged and consistent evidence’.²³⁶ For example when assessing one appellant’s claim, the UT determined the FtTJ failed to consider her consistent evidence that she had no contact with her family in Albania, a significant omission given its relevance to both risk and support on return. Furthermore, the FtTJ’s assertion that there was ‘no evidence’ the traffickers were well-connected or still posed a threat ‘imposed too high an evidential burden’.²³⁷ This approach overlooked the accepted fact that the appellant was a VOT and failed to reflect the inherent difficulty such individuals face in producing corroborating evidence.

In addition, the FtTJ’s finding that the appellant ‘may well’ be able to access family support in Albania was found to be unreasoned and contradicted the appellant’s consistent testimony regarding the absence of such support.²³⁸ No justification was provided for discounting this evidence. In relation to Article 8 ECHR, the FtTJ also erred by failing to consider the full circumstances of the Appellant’s return with her young children. These included her mental health difficulties, subjective fear of return, financial insecurity, lack of accommodation, and the social stigma faced as a VOT and single mother. Therefore, the UT determined:

²³⁴ UI-2024-001924 (UT IAC, unreported, 7 November 2024) §16.

²³⁵ *Ibid.*, §17.

²³⁶ UI-2024-003710 (UT IAC, unreported, 15 October 2024) §21.

²³⁷ *Ibid.*

²³⁸ *Ibid.*, §23.

*'The judge's assessment was one-sided, in that only the factors weighing in favour of removal were taken into account and in this he materially erred.'*²³⁹

This is not to suggest that none of the cases examined followed the guidelines for vulnerable victims, nor that credibility is questioned solely based on the nationality of the applicant. Indeed, four cases explicitly refer to the FtTJ implementing additional guidelines for vulnerable victims, yet the majority fail to consider the impact this has on the evidential burden placed on the applicant to rebut the presumption of safety.²⁴⁰ Ultimately, analysis reveals in 36.364% of cases the UT Judge found issue with the FtTJ reasoning in relation to the credibility finding of the applicant. This is not to say credibility should not be subject to scrutiny but rather 'Material facts must not be considered in isolation; the evidence must be considered in the round, and the key issues assessed in context.'²⁴¹ In many of these cases, the FTT Judge took issue with the applicants credibility despite their narrative being both internally (and in many cases externally) consistent.²⁴²

6.2.2 Findings within the Normative Framework

Therefore, in examining the findings in relation to the normative framework established in Chapter 4, FtTJ credibility findings on Albanian appellants presents some deficiencies. Firstly, the fact that in 36.364% of cases the UT Judge found issue with the FtTJ reasoning in relation to the negative credibility finding of the appellant suggests flaws in decision making. Although judicial scrutiny of credibility is a necessary part of asylum proceedings, the UT raises concerns when the FtTJ places weight on limited pieces of evidence, over the majority of corroborating material. This raises concerns on access to an individual assessment; 'The notion of 'safe country of origin' must never be applied mechanically and must not dispense with an individual, personal and complete examination of asylum claims.'²⁴³ With language relating to

²³⁹ *Ibid.*, §27.

²⁴⁰ UI-2024-001176 (UT IAC, unreported, 8 October 2024) §6, UI-2024-003115 (UT IAC, unreported, 23 January 2025) §29, UI-2024-003611 (UT IAC, unreported, 14 January 2025) §12.

UI-2024-003710 (UT IAC, unreported, 15 October 2024)§12- The FTT was acknowledged to have followed the procedure for a vulnerable witness but the UT Judge suggested 'judge's approach shows little understanding of the difficulty the appellant would have in producing the evidence it was considered was lacking.'

²⁴¹ *Assessing Credibility and Refugee Status in Asylum Claims Lodged on or after 28 June 2022*, p. 43.

²⁴² See UI-2024-003710, §24.

²⁴³ CoE, *Res1471*, § 7.5.

appellant's being an 'economic migrant' or perpetuating 'an illusion that he has sought to create' indicate a starting point of disbelief and scepticism, suggesting the 'potential loss of a fairly conducted two-tier decision-making process'.²⁴⁴

In addition, a fair individual assessment is also central to the ability to rebut the presumption of safety. As established in the normative framework; 'A designation of safety should never be a substitute for a substantive individual examination of the claim.'²⁴⁵ Therefore, to examine the case under the belief of 'sheer unlikelihood', the UT consistently has deemed this an error of law in regard to conducting a substantive individual examination in the cases examined.²⁴⁶ This indicates in adherence to the normative framework.

Moreover, these principles and procedural guarantees are arranged in the Guidelines of Human rights protection in the context of accelerated asylum procedures (2009). The guidelines take particular mind to procedural rights and those of vulnerable persons.

1. The examination of the merits of the asylum application shall be based on the asylum seeker's individual situation and not solely on general analysis and evaluation of a given country.
2. The fact that the asylum seeker comes from a safe country of origin shall be only one element among others to be taken into account in reaching a decision on the merits of the claim.

Specifically, the CoE resolution stresses that states 'ensure that certain categories of persons be excluded from accelerated procedures due to the vulnerability of the persons concerned and the complexity of the case'.²⁴⁷ This includes victims of torture, sexual violence, and trafficking. Indeed, both the CoE and UNHCR recognise the evidential burden on VOTs such as trauma and memory impairment and delays in disclosure.²⁴⁸ Therefore, if a country like Albania is

²⁴⁴ See UI-2024-003486 §13, UI-2024-003073 §6 and UI-2024-002214, §17.

²⁴⁵ UNHCR, *Guidelines on International Protection No. 12*, §14.

²⁴⁶ UI-2024-003486 §13.

²⁴⁷ Council of Europe, Resolution 1471, §8.11.

²⁴⁸ Council of Europe, Resolution 1471, §7 and UNHCR, *Guidelines on International Protection No. 12*, §27.

designated ‘safe’, there is a strong presumption against risk, making it harder for VOTs to be believed. This is evident in cases the FtTJ ‘imposed too high an evidential burden’, overlooking the accepted fact that the appellant is VOT and failed to reflect the inherent difficulty such individuals face in producing corroborating evidence.²⁴⁹

Therefore, the recurring theme that emerged of failing to consider appellants as vulnerable victims proves problematic, particularly after they have been already subject to accelerated procedures that heightens the burden of proof *de facto*. Moreover, with the theme of incredibility being established, this seems to have disproportionately effected VOT and survivors of modern slavery in the chosen cases. Therefore, the interconnectedness of these dynamics indicates a failure to ‘not shift the burden of proof onto the applicant, particularly where indicators of vulnerability exist.’²⁵⁰

6.3 Use of Country of Origin Information in Upper Tribunal Decisions

Amongst the UT role to oversee an appeal of (negative) decision, the UNHCR considers that the right to an effective remedy includes ‘the remedy must provide for a review of the claim by a court or tribunal, and the review must examine both facts and law based on up-to-date information.’²⁵¹ In addition, best state practice should not apply the designation in a rigid manner, denying an applicant an individual assessment. Rather the standards indicate decision-makers must ‘base any presumption of safety on precise, impartial and up-to-date information and admits the applicant to the regular asylum procedure, so that s/he has an effective opportunity to rebut any general presumption of safety based on his/her particular circumstances.’²⁵²

Indeed, this is supported CoE Guidelines that the SCO concept should be implemented with ‘Up-to-date information...from a variety of reliable and objective sources, which should be

²⁴⁹ UI-2024-003710, §21.

²⁵⁰ UNHCR, *Guidelines on International Protection No. 12*, §12.

²⁵¹ *Ibid.*, p.7.

²⁵² UNHCR, EC/GC/01/12, p.9.

analysed.²⁵³ In UT cases, COI serves a significant evidentiary function to establish external consistency for the applicant account. This is also reflected in literature by Vogelaar, with the role of COI in forming serving to rebut or form the presumption of safety both prior and during tribunal proceedings.²⁵⁴

This function is outlined in the manual for *Assessing Credibility and Refugee Status in Asylum Claims*, on how COI can play a role in the assessment of whether a claimant has a well-founded fear of persecution. It states COI can assist judges with '(i) understanding the claimant's account; (ii) preparing appropriate questions for the interview; (iii) determining how credible certain statements made by the claimant are; and (iv) assessing credibility and risk on return.'²⁵⁵ The materials recommended include Home Office CPINs, as well as 'other COI products' such as reports produced by other countries or expert witnesses.²⁵⁶ Yet, the document still emphasises 'While CPINs provide COI specific to claim-types in a particular country, you must still consider each case on its individual facts against the available relevant background COI.'²⁵⁷

Moreover, the use of COI by UK judges was examined in a study conducted by the Immigration Advisory Service titled '*The Refugee Roulette*', which interviewed five Immigration Judges (2 SIJs; 1 DIJ; 2 part-time IJs). During this study focus groups were conducted asking participants about the role of COI in refugee status determination. The results were varied on multiple issues. When asked how much time IJs spent on considering COI, 'probably about 20 minutes or so ... because you skim read', while in comparison one said, 'it's likely to be not simply a question of what the words are but analysing that by cross-referring to other disparate pieces of evidence and trying to make an assessment'.²⁵⁸ Regarding credibility one IJ stated:

²⁵³ Council of Europe, *Guidelines on Human Rights Protection in the Context of Accelerated Asylum Procedures* and Explanatory Memorandum 9 (Committee of Ministers, 1 July 2009).

²⁵⁴ F Vogelaar, 'The Eligibility Guidelines Examined: The Use of Country of Origin Information by UNHCR' (2017) 29 *International Journal of Refugee Law* 617.

²⁵⁵ *Assessing Credibility and Refugee Status in Asylum Claims Lodged on or after 28 June 2022*, p. 24.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

²⁵⁸ Natasha Tsangarides, *The Refugee Roulette: The Role of Country Information in Refugee Status Determination*(Immigration Advisory Service, Jan 2010)

²² <https://www.refworld.org/reference/themreport/2010/en/71599>.

‘The background doesn’t really have to support them, if there’s nothing in the background which contradicts what they say and they give the same account and they’ve given it a couple of times and there’s no apparent reason not to believe it and it’s a generally credible account... then that’s probably the burden of proof discharged.’²⁵⁹

Notably this is in reference to the pre-2022 standard of proof. Similarly, when asked ‘do you assess the strength of a source?’, the IJ’s responses were varied.²⁶⁰ One stated they would briefly read the original document, but applicants should rely on their representative to ‘deal with that kind of material, you can’t just assume that the IJ’s going to do it.’²⁶¹ Whereas, one IJ spoke extensively on his levels of analysis ‘the need to look or sourcing, currency, relevance and context when analysing information.’²⁶²

The report concluded despite the absence of formal criteria for evaluating sources among IJs, those interviewed demonstrated an understanding of source analysis and applied similar analytical methods ‘albeit to different degrees.’²⁶³ However, this report cannot provide significant insight to the research question, particularly because it was conducted with a small sample size and published in 2010. In addition, the study was not country specific, nor in reference to SCOs but can be assumed that nuanced and detailed examination of COI is vital to successfully rebut the presumption those applicants face. Therefore, it proves helpful in the context of the case analysis by reflecting the varied approach and significance placed on COI by IJs, as identified in the Albanian cases examined.

6.3.1 Application and Assessment of COI Overturned by UT

In 13 of the cases examined (39.394%), the UT Judge took issue with the FtTJ’s approach to COI. While criticism by the appellant on the FtTJ’s handling of is to be expected to substantiate the appeal, the surprising theme that emerged is the UT finding of a material error law in this

²⁵⁹ *Ibid.*, p.23.

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*, p. 24.

²⁶² *Ibid.*, p.23.

²⁶³ *Ibid.*, p. 24.

regard. Notably, the UT cannot grant an appeal merely on ‘disagreement with properly reasoned findings of fact’, but it can correct legal errors (e.g.: Failing to properly apply relevant COI, misunderstanding or overlooking relevant evidence, FtTJ’s findings are irrational or perverse).²⁶⁴

This was emphasized by the case of *Mibanga v SSHD* which reaffirmed the legal requirement for decision-makers to assess asylum claims holistically, rather than making early credibility findings and then disregarding or downplaying supporting evidence.²⁶⁵ In *Mibanga*, the Court of Appeal found that the adjudicator had wrongly dismissed a medical report that could explain inconsistencies in the appellant’s account, effectively assessing credibility in isolation. This is particularly relevant in protection claims, especially from designated Safe Countries of Origin (SCOs), where a presumption of safety can lead to early scepticism. *Mibanga* reinforces that all evidence, including expert and medical reports, must be fully integrated into the credibility assessment to ensure a fair evaluation of risk.

One case where the FtTJ’s omission of COI was deemed an error on a point of law, was in *MZ*. The appellant’s case was based on her claim that she was abducted and forced into prostitution by men to whom her husband owed money. It was accepted *MZ* was a VOT, but not that she would be at risk of re-trafficking or any other form of mistreatment. The appeal was granted on the ground ‘the judge erred in failing to state the weight given to the unchallenged country report in relation to the issue of risk on return.’²⁶⁶ Despite, acknowledging Human Trafficking CPIN on the chance of familial and societal rejection and *MZ*’s consistent account of having no contact with her family, the FtTJ determined she would receive family support upon being returned to Albania.

The UT Judge reasoned ‘That finding was unaccompanied by any reasoning and was unsupported by the consistent evidence as to lack of contact between the appellant and her family. If the judge rejected the appellant’s account of a lack of contact, no reasons were given

²⁶⁴ UI-2024-002216 (UT IAC, unreported, 8 October 2024) §35.

²⁶⁵ *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367 (on appeal from IAT decision of 10 August 2004).

²⁶⁶ UI-2024-003710 (UT IAC, unreported, 15 October 2024) §10

for doing so.²⁶⁷ Moreover the UT highlighted that the FtTJ's rejection of findings by a 2019 study that found 'Twelve out of 15 practitioners claimed that most families rejected trafficking victims following their return to Albania.'²⁶⁸ For these reasons the decision of the FtT was set aside, with the UT Judges stating in the decision:

*'There is no inconsistency with the account put forward by the appellant and that set out in the extracts from the background evidence reproduced in the decision, therefore the judge ought to have provided reasons for finding that the appellant would not be treated as most the VOTs referred to in the study were by their own families...The judge's assessment was one-sided, in that only the factors weighing in favour of removal were taken into account and in this he materially erred.'*²⁶⁹

Another example of the UT finding inadequate reasoning from a FtTJ for placing minimal weight on evidence to support an applicant's claim can be seen in the case of *JV*. Found to be a victim of modern slavery in that he was a victim of child criminal exploitation between May and September 2018.²⁷⁰ The FtTJ accepted that the appellant was a member of a PSG but found he could safely relocate and that there were no very significant obstacles to reintegration. Unlike in the FtT, the UT Judge referenced in detail the 2023 USSD report, 2024 CPIN and multiple ASYLOS reports.

Although the reports do indicate substantial reforms in Albania for victims of modern slavery. Additionally, instruments such as the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) has recognised Albania's initiatives to enhance victim protection, including recent legislative reforms and the implementation of the 2018–2020 National Action Plan for Combating Trafficking in Human Beings.²⁷¹ However, Guri and Rees

²⁶⁷ *Ibid.*, §23.

²⁶⁸ Home Office, *Country Policy, and Information Note: Albania – Human Trafficking* (CPIN, 2024) [8.1.4] and Dr. Klea Ramaj, *The Aftermath of Human Trafficking: Exploring the Albanian Victims' Return, Rehabilitation, and Reintegration Challenges* (2019) in UI-2024-003710, §24.

²⁶⁹ UI-2024-003710, § 25 and §27.

²⁷⁰ UI-2024-001176 (UT IAC, unreported, 8 October 2024) §4.

²⁷¹ Group of Experts on Action against Trafficking in Human Beings (GRETA), *Evaluation Report on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Albania (Third Evaluation Round)* GRETA(2020)09 (Council of Europe, 15 December 2020) <https://rm.coe.int/greta-2020-09-fgr-alb-en/1680a0b84f>.

highlight that GRETA's 2020 report highlights concerns about the sufficiency of Albania's state protection and support systems highlight the challenges survivors continue to face, raising questions about the suitability of the UK's safe country designation.²⁷² The case specifically considers Albania's initiatives:

*'In terms of the systems of protection in place in Albania, Version 15.0 of the Albania: Human trafficking CPIN at 10.1.4 refers to dedicated law, a dedicated task force, a National Rapporteur, an NRM, law enforcement and judiciary training initiatives, dedicated prosecutors and courts, and victim shelters to prevent and combat human trafficking.'*²⁷³

The UT Judge also looks at implementation with the most recent 2024 ASYLOS report and part of the Home Office Report of a fact-finding mission suggesting the comprehensive framework was implemented:

*'They may have told you about the framework, but did they tell you that the budget is zero. We have laws and frameworks and we have strategic plans, we have everything but they are not monitored they have zero budget and change every 2 or 3 years. We have not as a civil society, seen any evaluation uproot to show what they have done within this framework...'*²⁷⁴

This is considered by the UT in conjunction with the applicant's personal circumstances. Such as risk factors of past persecution, 'The appellant has been persecuted in the past. It is trite law that past persecution is a serious indicator of a future risk of persecution, absent good reasons to consider that it would not be repeated' and medical evidence of PTSD.²⁷⁵ It with this reasoning that the appellant had demonstrated a well-founded fear of persecution in Albania for a refugee convention reason. It is evident that this analysis was not afforded to the applicant

²⁷² Kevin Guri and Sarah Rees, 'Unsafe in a Safe Country: Evaluating the Support and Reintegration Challenges for Albanian Trafficking Victims within the Context of the UK's "Safe Country" Designation' (2024) 12 *Open Journal of Social Sciences* 519, doi:10.4236/jss.2024.125030.

²⁷³ *Ibid.*, § 33.

²⁷⁴ *Ibid.*, § 39.

²⁷⁵ *Assessing Credibility and Refugee Status in Asylum Claims Lodged on or after 28 June 2022*, p. 23.

in the first instance decision, with this failure to do so serving to reinforce a presumption of safety and adverse credibility of applicants even if they remain both internally and externally consistent.

6.3.2 Expert Witnesses

In addition to the theme of the UT finding FtTJ failing to provide well-reasoned explanation of placing minimal weight of evidence, this too was prevalent regarding the use of expert witnesses. The use of expert witnesses is outlined in the *Assessing Credibility and Refugee Status* guidance, yet only four cases examined use this form of evidence. This is most likely because to secure an expert witness requires time and funds that are unavailable in most cases. Yet, these cases are valuable to explore because they follow a similar theme as explored in the last section. However, it is important to note judges do not need to accept an expert witness's account, just as they do not have to accept every point in a COI report, but what the UT judges highlight is that not placing weight on evidence must be well-reasoned and not simply because it does not fit a predetermined narrative.

This is illustrated in *AT*, who appealed on the ground the FtTJ gave little or no weight to the expert report of Dr Tahiraj on the basis that the expert was not impartial and that the report was vague. Firstly, on the point of FtTJ that Dr Tahiraj had insufficient knowledge or experience, the UT notes 'The expert's experience is set out over 3 pages of the report in section 1.4 and this cannot be described as an inadequate foundation of relevant experience without a sufficiently detailed explanation – this is missing from the judgment.'²⁷⁶ Furthermore, the criticism that that the expert had acted improperly by relying upon 'anecdotal evidence' from newspapers or websites.²⁷⁷ On this the UT noted there was 'nothing in principle' wrong with this approach 'The question was one of weight to be given to those conclusions by the Tribunal. The Judge therefore erred by seemingly refusing to engage with the report on that basis alone.'²⁷⁸

²⁷⁶ UI-2023-003948 (UT IAC, unreported, 9 October 2024) §25a.

²⁷⁷ *Ibid.*, §25b.

²⁷⁸ *Ibid.*

Moreover, the UT Judge highlighted the FtTJ conclusion that the report is ‘vague and unsubstantiated’ due to its use of long sentences and subordinate clauses does not constitute a lawful basis for affording it little or no weight, rather stating ‘the report is lengthy and contains hundreds of footnoted sources and quotes from the underlying material in English.’²⁷⁹ Additionally, the FtTJ finding that the expert lacked impartiality because she acknowledged the relevance of blood feud evidence is problematic, particularly as it appears influenced by the earlier rejection of the appellant’s account.²⁸⁰ Ultimately, the problematic reasoning was described as the following ‘finding that the expert was not impartial based on her conclusion that the Appellant was not credible puts the cart before the horse.’²⁸¹ Therefore, FtTJ materially erred in her factual assessment improperly set aside the expert report when making her credibility findings, rather than first assessing the weight of the expert’s conclusions.

‘We accept Mrs Nolan’s arguments that the weight to be given to an expert report is a matter for the judge. It is however trite law that a judge should give sufficient reasons for explaining why the report has been given (or not given) weight and we have already explained why, in our view, the Judge failed to do that in this particular case.’²⁸²

Furthermore, the failure to consider expert evidence ‘properly and fairly, in the round’ is clear in the case of *RH*, who’s appeal on the failure to consider Country Expert Report, corroborative evidence and Trauma Report and Medical Records was upheld in the UT. In this case *RH* relied on two expert witnesses: Mr Erion Fejzulla (human rights expert on the rule of law and justice in Albania), and Ms Morris (psychotherapist and counsellor specialising in acute trauma of VOT). Both of which the FtTJ determined had little weight in the case outcome.

In his report, Mr. Fejzulla supported the plausibility of the appellant’s account and offered his expert opinion on several key issues, including the availability of state protection, levels of police corruption, blood feud-related violence, challenges to living anonymously, and the appellant’s specific risks concerning internal relocation and potential re-trafficking. In response

²⁷⁹ *Ibid.*, 25d.

²⁸⁰ *Ibid.*, 25e.

²⁸¹ *Ibid.*, 25f.

²⁸² *Ibid.*

the FtTJ concluded ‘The author may have acquired a knowledge of these matters through his work but as stated above his CV relates no specific expertise in blood feuds’, of which the judge repeated over 25 times.²⁸³ The UT determined Mr. Fejzulla’s report was thorough and well-referenced, yet the FtTJ did not engage with the supporting materials or data it contained.

Leading the UT Judge to comment:

‘The judge’s repetition, mantralike, of the phrase set out above was nonsensical. Even had he thought that Mr Fejzulla lacked the experience to comment on blood feuds from a perspective of the law, it does not follow that he was ill-equipped to comment on state protection and corruption. The judge’s discounting of the expert’s expertise is undermined by his repeated acceptance that he may have acquired knowledge through his work.’²⁸⁴

In addition, ground four contained criticism of the FtTJ treatment of the trauma report prepared by Ms Morris. This evidence was discounted for the reasons that she did not have experience treating patients in the medical field ‘author does not appear to possess the relevant qualifications to give weight to the assertions made in the report.’²⁸⁵ However in the view of the UT, in finding that Ms Morris was not a clinician, the judge overlooked evidence of her specific expertise and dismissed her detailed findings and recommendations, particularly in relation to internal relocation as well as the risk of him being re-trafficked.

‘The manner in which the judge rejected the medical evidence lends weight to the error alleged in ground one, that is that the judge applied a higher standard of proof than that required. That the judge erred as argued is further supported by the lack of weight applied to the fact that the appellant had given a consistent account of events, that he had been a minor when exposed to traumatic events and that he had been accepted as a victim of trafficking.’²⁸⁶

²⁸³ UI-2024-001879 (UT IAC, unreported, 9 November 2024) §15.

²⁸⁴ *Ibid.*, §16.

²⁸⁵ *Ibid.*, §20.

²⁸⁶ *Ibid.*, §26.

Therefore, the UT Judge determined the scope and significance of the findings required, combined with the nature of the legal errors in this case, resulted in the appellant being denied a fair assessment of his protection appeal. Ultimately, the FtT decision was set aside and ordered to be remade. This case highlights how the presumption of safety associated with certain countries of origin can lead to flawed asylum determinations when decision-makers fail to properly engage with expert and corroborative evidence. The FtTJ in *RH* discounted the expert opinions of both a human rights specialist and a trauma counsellor, undermining their relevance to the appellant's risk of harm and ability to safely internally relocate. The UT found this dismissal unjustified and indicative of a higher-than-appropriate evidential threshold. This reveals a problematic reliance on presumed safety, which can result in the overlooking of credible evidence that contradicts such assumptions. It suggests that the presumption of safety may lead to an inadequate assessment of real risk, especially when compounded by a failure to consider expert input holistically or in context.

These cases suggest that the SCO designation of Albania may contribute to a tendency among decision-makers to discount expert evidence that challenges presumptions of safety. This risks compromising procedural fairness by limiting engagement with relevant, credible evidence, contrary to UNHCR and CoE procedural safeguards. Moreover, it places appellants in a predicament, with legal experts highlighting that:

*'Any asylum claim for an Albanian...is unlikely to be successful without significant expert testimony to identify and explicate key risks and outline areas where the claimant's individual circumstances are at odds to the country guidance'*²⁸⁷

6.3.3 Application and Assessment of Country Evidence Upheld by UT

However, this is not to suggest the UT found that in all the cases in this sample the FtTJ failed to assess relevant country evidence. In the total of 19 cases that filed an appeal on the ground of failure to consider COI, corroborative evidence, and or Country Expert Report, six of the

²⁸⁷ *Punishing the Victim*, p. 24 from Migrant & Refugee Children's Legal Unit (MiCLU), *Risks to the Mental Health and Wellbeing of Albanian Asylum Seekers: Following Events at Brook House, on the Bibby Stockholm, and the Wider Hostile Context in Which Their Claims Are Being Examined* (Breaking the Chains, 2024) <https://miclu.org/assets/uploads/Brook-House-Albanian-asylum-seekers-mental-health-risks.pdf> p. 6.

cases resulted in the UT upholding the FtT findings and decision on this theme.²⁸⁸ Although this is less than the considerably less than the alternative, it still a vital part of the case coding findings.

One illuminating case on this theme is *AV*, in which the appellant appealed on the ground that the FtTJ was unlawful in failing to take into account the expert's report in relation to the sufficiency of protection. In this case the court heard from Mr Harvey who stated *AV*'s 'risk of him being traced and re-trafficked are high.'²⁸⁹ Yet the distinction for this case for the UT Judge was that the FtTJ adequately explains why she came to a different view from the expert as to future risk, stating:

*'She was entitled not to adopt the opinion of the expert, and has done so without rejecting his relevant expertise – but on the basis of her own independent assessment of the particular narrative of the Appellant.'*²⁹⁰

This is 'adequately reasoned and sustainable' following the logic that it had been four and a half years since the appellant had returned to Albania, and the risk Mr Harvey had highlighted presupposes the traffickers would learn that he has returned and subsequently seek out revenge.²⁹¹ In addition the UT Judge determined that the FtTJ had proper regard to Mr Harvey's opinion as to the risk of re-trafficking by those other than those who had trafficked him in the first place by highlighting 'support of family; and, would be able to earn his own living' significantly reducing his risk of exploitation upon return as argued by the report.²⁹² Therefore, the UT Judge concluded 'this is manifestly not a *Mibanga* case' but rather 'what is submitted here is in reality little more than a disagreement with properly reasoned findings of fact' and the FtT was not unlawful.²⁹³

²⁸⁸ See UI-2024-002216 (UT IAC, unreported, 8 October 2024), UI-2024-004496 (UT IAC, unreported, 13 January 2025), UI-2024-001861 (UT IAC, unreported, 24 December 2024), UI-2024-001336 (UT IAC, unreported, 4 November 2024), UI-2024-003297 (UT IAC, unreported, 16 October 2024).

²⁸⁹ UI-2024-002216 (UT IAC, unreported, 8 October 2024) §31.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*, §34.

²⁹² *Ibid.*

²⁹³ *Ibid.*, §35.

Moreover, another case that is an example of the UT upholding that the FtTJ provided a clear and coherent decision explaining why the appellant’s asylum and protection claims did not succeed is *MB*. In this case the Appellant submitted the FtTJ erred by failing to consider additional evidence of why he would be able to relocate within Albania. This additional evidence (an article from Garden Court Chambers) criticised the 2024 Human Trafficking CPIN and offered reasons why internal relocation was unavailable to some VOT. However, the UT notes that ‘is not an error of law that the First-tier Tribunal Judge did not refer to a specific piece of evidence and that the First-tier Tribunal lawfully relied upon neutral sources of information in the CPIN which was a position rationally open to it.’²⁹⁴ In addition the FtTJ considered the viewpoint of the Garden Court Chambers but reasoned why this individual was set apart from the vulnerability indicators defined in it, with *MB* being 20 years old; in good health; has family outside his home area who could help support him. Therefore, the UT concluded:

*‘The decision is adequately and lawfully reasoned with reference to the individual facts of this case and the country of origin materials on both the issues of internal relocation and sufficiency of protection.’*²⁹⁵

6.3.5 Findings within the Normative Framework

6.3.4.1 Overriding Individualized Assessments

In 13 of 33 cases (39.4% of the relevant sample), the UT found material errors in the FtTJ handling of COI. Such errors (ranging from omission to misinterpretation) raise concerns about procedural fairness. These were not instances of mere disagreement on factual grounds but examples where legal thresholds of rationality, procedural fairness, and evidential balance were demonstrably breached. The UT’s interventions in these cases expose patterns of legal error that directly align with the theoretical risks posed by uncritical reliance on SCO designations and under-explored COI. Normative standards from UNHCR and the CoE emphasize that SCO status must not create presumptions of safety overriding individualized assessments. CoE

²⁹⁴ UI-2024-003297 (UT IAC, unreported, 16 October 2024) §6.

²⁹⁵ *Ibid.*, §9.

Resolution 1471 (2005) and UNHCR guidance stress the need for full, balanced consideration of all evidence, including COI, even in accelerated procedures.²⁹⁶

Cases like *MZ* show the FtTJ's failing to explain why unchallenged COI indicating high risks of familial rejection and stigma were given little weight. This lack of reasoning risks undermining effective asylum procedures, which require holistic credibility assessments informed by country conditions. Similarly, in *JV*, the UT noted that recent reports on Albania's protection system, while showing formal structures, also highlighted poor implementation and budgetary issues overlooked by the FtTJ. This gap conflicts with normative requirements to assess not only legal frameworks but their practical operation.

These findings suggest the SCO designation may unintentionally encourage confirmation bias, where COI inconsistencies favour return decisions without sufficient justification, contrary to UNHCR cautions against shifting the burden of proof. Furthermore, this is reiterated in the CoE resolution even under accelerated procedures, the decision must be reasoned, based on 'individual examination, and subject to independent supervision.'²⁹⁷ While the UT's role provides safeguards, these cases indicate structural challenges in ensuring fair and thorough COI assessments within the constructed narrative of safety.

Moreover, the UT also applied the presumption articulated in refugee law that past persecution is *prima facie* evidence of future risk, absent compelling rebuttal. In *JV*, no such rebuttal was provided by the FtTJ. The decision to allow the appeal exemplified a legally rigorous application of protection principles, rooted in both COI and the personal vulnerability indicators of the applicant, indicators that had been overlooked at first instance likely due to an implicit presumption of safety.

This pattern, where COI is acknowledged but then functionally neutralised, suggests that adverse credibility assessments often become a filter through which all subsequent evidence is interpreted. In both *MZ* and *JV*, this resulted in FtTJ decisions that effectively precluded a full and fair engagement with relevant country evidence. In these cases, the UT did not substitute

²⁹⁶ UN High Commissioner for Refugees, *Guidelines on International Protection No 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) 14* (HCR/GIP/16/12, 2 December 2016).

²⁹⁷ Council of Europe, Resolution 1471, §9.5.

its judgment merely on evidentiary preference; rather, it identified a systemic failure to adhere to the required legal structure for evaluating protection claims.

In sum, the UT's findings in these 13 cases reinforce the theoretical concern that, in the presence of a SCO presumption, there is a tendency to discount or superficially engage with COI that conflicts with preconceived narratives of safety. By failing to examine risk holistically and in the round, FtTJ decisions in these cases breached core procedural standards. The UT's judgments offer critical jurisprudential correctives, but also highlight the fragility of first-instance decision-making where safety is presumed, and scrutiny is uneven.

6.3.4.2 *Accounting for Individual Circumstances*

In some cases, the UT upheld FtTJ decisions on COI, demonstrating that proper application of evidence remains possible regardless of the SCO designation. For example, in *AV*, the FtTJ provided clear, reasoned explanations for diverging from an expert's opinion on risk, consistent with UNHCR guidance and the CoE emphasis on reasoned decision-making even in accelerated procedures. The FtTJ's independent assessment accounted for individual circumstances, aligning with the right to an effective asylum procedure.

Similarly, in *MB*, the FtTJ lawfully relied on established COI and explained why additional evidence did not alter the decision on internal relocation or protection, respecting standards for evidence evaluation under human rights frameworks. These examples illustrate that while the SCO label can influence presumptions of safety, it does not inevitably undermine fair assessment of country evidence. Where tribunals engage thoroughly with COI and provide reasoned decisions, the right to an effective asylum process can be upheld, demonstrating the normative framework's applicability in practice.

However, it must be highlighted that although 'Judicial scrutiny is thus framed as essential to *correct procedural or substantive errors*- including improper use or disregard of COI', the lack of procedural safeguards in the earlier stages of asylum procedures (as discussed in Chapter 5) result in many applicants having no right to appeal under current SCO policy.²⁹⁸

²⁹⁸ UN High Commissioner for Refugees (UNHCR), *Asylum Processes (Fair and Efficient Asylum Procedures)* (EC/GC/01/12, 2 September 2005).

6.4 Conclusion

The themes that emerged from the case analysis both support and rebut the existing literature. As Castello argues ‘SCO practices have implications for the decisional autonomy of asylum adjudicators, an important but often under-studied aspect of asylum practice. Usually, the consequence of designating a country as ‘safe’ is to set up a presumption that the applicant is not a refugee.’²⁹⁹ Indeed, this was presented by the barriers appellants faced to prove credibility, with the UT finding the FtTJ made flawed credibility assessments in 36.364% of cases.

In addition, although the scholarship highlights the risk of an over whelming evidentiary burden or standard of proof for SCO appellants, the cases reveal the vast majority of FtTJs adhering to the relevant standard of proof. Therefore, although the new higher civil standard has been criticized by the UNHCR, it cannot be said to be a specific barrier for SCO appellant’s access asylum. However, the cases reveal an *de facto* higher standard of proof. With credibility forming part of the burden of proof. As a result, the pattern of flawed credibility assessments by the FtTJ serve to create a high threshold to rebut the presumption of safety.

Finally, these findings underscore the core concern raised in the research question: whether the UK's application of the SCO concept, particularly in Albanian asylum claims, aligns with international procedural safeguards and the right to a fair and effective asylum process. The UT’s repeated divergence from FtT decisions and reasoning reveal that, while SCO designations do not formally replace individualized assessments in the appeal stage, in practice they often distort them by shaping credibility judgments, undermining the weight of expert evidence, and allowing COI to be superficially or selectively applied. Although some FtTJ decisions demonstrate compliance with normative standards, the systemic inconsistencies observed suggest that the presumption of safety embedded in SCO policy risks bypassing the right to an effective remedy.

²⁹⁹ Castello, *Safe Country? Says who?*, p. 602.

Chapter Seven: Conclusion

7.1 Summary of Key Findings

The findings of both the Upper Tribunal case analysis and desk-based research reveal normative misalignment when examined in the context of the question ‘*To what extent does the UK’s designation of Albania as a ‘Safe Country of Origin’ undermine the right to an effective asylum procedure under human rights and refugee law?*’ Within human rights and refugee law, along with authoritative interpretive sources, the analysis framed whether the SCO policy, in practice, complies with international legal standards of procedural fairness, individual assessment, and access to remedies.

The analysis reveals that, in several instances, the findings diverge from the standards outlined in the normative framework. This suggests a misalignment between the UK’s current asylum practices and the procedural safeguards required under international refugee and human rights law. Firstly, the secondary research in Chapter Five revealed failure to meet procedural safeguards, illustrated by barriers in access to information and legal representation as well as the implementation of non-suspensive appeals. In addition, existing policies (such as Operation BRIDORA) indicate failure to afford applicants an individual assessment, a foundational principle of refugee law.³⁰⁰

Moreover, the appeal process analysed in Chapter Six exposed patterns of inadequate reasoning, limited engagement with country evidence, and barriers to rebutting the presumption of safety, pointing to an implementation gap where legal obligations are not consistently upheld in practice. Although further research would be needed due to the limited case sample, findings reaffirm the significance of missed vulnerabilities, poor reasoning, and inconsistent evidentiary thresholds.

³⁰⁰ UNHCR, *Handbook on Procedures and Criteria*, §44: ‘While refugee status must normally be determined on an individual basis, situations have also arisen in which entire groups have been displaced under circumstances indicating that members of the group could be considered individually as refugees. In such situations the need to provide assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of the group. Recourse has therefore been had to so-called “group determination” of refugee status, whereby each member of the group is regarded prima facie (i.e. in the absence of evidence to the contrary) as a refugee.’

However, this research does not seek to disregard the validity for states to reach for more efficient and streamlined processes to benefit both national resources and the applicant. Indeed, the UNHCR does recognise the need to triage applications to manage caseloads more effectively.³⁰¹ However, this comes with the caveat of maintaining procedural safeguards, therefore placing numerical constraints, and implementing policy that curtails them is fundamentally incompatible with international standards, and obligations under both human rights and refugee law.

7.2 Applicability Beyond Albania

Using Albania as a case study can be applied more generally, following the expansion of ‘safe’ countries to states outside of Europe. Announced at the end of 2023 and approved in March 2024, India and Georgia were added to the list of countries deemed safe under Section 80AA of the 2002 NIAA.³⁰² This decision was approved withstanding considerable political scrutiny from Members of Parliament, with SNP MP Chris Stephens stating ‘Given that the home office has accepted asylum claims from people from Georgia and India, I find it quite bizarre that that we are just now declaring these countries to be safe.’³⁰³ As well as Labour MP Sarah Owen citing India’s forcible return of Rohingya women to Myanmar.³⁰⁴ Therefore, this thesis’ research on Albania (which has a long-standing designation as ‘safe’) hopes to stimulate exploration on the new-found effects of the expansion of SCO policy.

7.3 Final Reflections

³⁰¹ UNHCR, *Guide to Asylum Reform in the United Kingdom* (23 February 2021) §7.

³⁰² Secondary Legislation Scrutiny Committee, *Lords Committee raises concerns over immigration law change declaring India and Georgia as ‘safe states’* (News, 1 December 2023) <https://committees.parliament.uk/committee/255/secondary-legislation-scrutiny-committee/news/198788/lords-committee-raises-concerns-over-immigration-law-change-declaring-india-and-georgia-as-safe-states/>.

³⁰³ Naomi Canton, “Motion to put India, Georgia on UK safe list clears parliamentary body, will now go to Commons, Lords for approval” *Times of India* (12 January 2024) <https://timesofindia.indiatimes.com/world/uk/house-panel-oks-motion-to-put-india-on-uks-safe-list/articleshow/106743812.cms>.

³⁰⁴ *Ibid.*

The fact remains that for human rights advocates the ‘the medicine is hard to swallow’.³⁰⁵ Indeed, the current SCO policy in the UK continues to ‘sacrifice fairness on the altar of efficiency’.³⁰⁶ This sentiment is echoed by the successors of the Parliament's Joint Committee on Human Rights (JCHR), who published the report at the end of June 2025 of its inquiry into the Government's Border Security, Asylum and Immigration Bill.³⁰⁷ The inquiry highlights the failure of the new bill to repeal section 59 presents a risk to the UK’s international obligations. The Committee states recommendation regarding section 59 of the IMA:

‘We share the concerns of our predecessor Committee that, whilst the states listed may be considered safe in general, this does not guarantee the safety of all individuals from these states... a protection or human rights claim which must be considered on its merits in order to guard against the risk of refoulement.’³⁰⁸

This position statement comes amidst the final calls for evidence for a new inspection into asylum casework and the quality of Home Office asylum decisions by the ICIBI, which hope to see improvement from the then Chief Inspector, David Neal, finding the focus on clearing the asylum backlog 'at all costs' had led to ‘perverse outcomes’, with quality sacrificed for increased productivity.³⁰⁹ Ultimately, only time will tell the long-term impact of the UK’s SCO policy, but the findings show that continuing to heed the warnings of organisations such as the UNHCR and CoE of the potential risks of ‘safe’ countries can and will amount to a violation of international obligations.

³⁰⁵ Goodwin-gill, p. 249.

³⁰⁶ Michael John-Hopkins, ‘The Emperor’s New Safe Country Concepts: A UK Perspective on Sacrificing Fairness on the Altar of Efficiency’ (2009) 21(2) *International Journal of Refugee Law* 218 doi:10.1093/ijrl/eep007.

³⁰⁷ Joint Committee on Human Rights, *Legislative Scrutiny: Border Security, Asylum, and Immigration Bill* (Fourth Report of Session 2024–25, HL 143; HC 789, 20 June 2025).

³⁰⁸ *Ibid.*, p. 45.

³⁰⁹ EIN, *ICIBI calls for evidence on asylum casework and quality of decision-making, one week left to respond* (24 June 2025) <https://www.ein.org.uk/news/icibi-calls-evidence-asylum-casework-and-quality-decision-making-one-week-left-respond>.

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