

IMMIGRATION APPEAL TRIBUNAL

MP [Trafficking – Sufficiency of Protection] Romania [2005] UKIAT 00086

Date of hearing: 21 February and 2 March 2005

Date Determination notified: 21 April 2005

Before

Mr. P. R. Moulden (Vice President)

Mr. P. R. Lane (Vice President)

Mr. R A McKee

Between

Appellant

and

Secretary of State for the Home Department

Respondent

DETERMINATION AND REASONS

- 1) The Appellant is a citizen of Romania. In these proceedings both parties have been given permission to appeal against the determination of an Adjudicator, Mr. John S. Law. Throughout this determination we will refer to the claimant as the appellant and the Secretary of State as the respondent. The respondent refused to grant the Appellant asylum and gave directions for her removal from the United Kingdom as an illegal entrant. The Adjudicator dismissed the appeal on Refugee Convention grounds but allowed it on human rights grounds.
- 2) Mr. D H Southey of Counsel, instructed by the Refugee Legal Centre, appeared for the Appellant. Miss J. Richards of Counsel, instructed by the Treasury Solicitor, appeared for the respondent.
- 3) Immigration history
- 4) The Appellant entered the United Kingdom hidden in a lorry on about 19 June 2003. She was arrested and claimed asylum. The notice containing the decision against which she appeals is dated 12 July 2003. The Adjudicator heard the appeal on 4 May 2004 and his determination was promulgated on 19 May 2004. The appellant was granted permission to appeal on 19 July 2004 and the respondent on 29 November 2004. We heard the appeal over two days, on 21 February and 2 March 2005.
- 5) The facts

- 6) The appellant claimed that she was an orphan who lived in an orphanage until she was approximately 18 years of age. After that she lived in rented accommodation in Borsec, not far from the orphanage. She had a full-time job. She has no known relatives. One evening in December 2002 she was kidnapped in the street and at knifepoint by a gang of gypsies who took her by car to Bucharest. There she was kept in a locked room, raped by her captors and forced into prostitution. After about two and a half months she managed to escape and take a train back to Borsec. She returned to her accommodation, locked herself in, and only ventured out after about a week when she went to the police to report what had happened. They took no action and she went back the next day. A police officer told her that the gypsies had money and influence and it would not be in his interest to pursue her complaint. She decided to move and went to Timisoara to seek employment. After about two days she bumped into the gypsies who had abducted her in the street. She screamed and ran away, but they caught her and took her back to Bucharest. She was beaten, raped and then sold to another gypsy group who took her to Italy, where she was treated in the same way. While she was there another girl managed to escape and go to the police, but while she was at the police station her captors came and took her back by force.
- 7) In June 2003 the appellant was able to escape. Rather than going to the Italian authorities she found a lorry park and persuaded a driver to carry her to the United Kingdom. In London the appellant met another Romanian asylum seeker who helped her. They were stopped by the police and she claimed asylum at the police station.
- 8) The hearing before the Adjudicator and his determination
- 9) Both parties were represented at the hearing before the Adjudicator and the appellant gave evidence. The Adjudicator had concerns about some aspects of her credibility but, after assessing these, accepted her account of events. The respondent no longer disputes her credibility. The Adjudicator found that in Romania there was a system of protection, although this had “inherent difficulties for historical reasons”. The appellant did not fall within a particular social group and there was no other Convention reason. It was the lack of a Convention reason that caused the Adjudicator to reject the Refugee Convention grounds. The Adjudicator makes mention of the “European Convention” but, taken in context, he must have intended to refer to the Refugee Convention.
- 10) In relation to the Article 3 grounds the Adjudicator took a holistic approach, taking into account the appellant’s mental health, including the risk that she would commit suicide, and the risk of further inhuman and degrading treatment from the gangs who ill treated her in the past, before finding there was a real risk that her Article 3 human rights would be infringed. In this context there is a tension between the Adjudicator’s findings in paragraph 25 of the determination and those in paragraph 28. The Article 3 risks in paragraph 28 are limited to those she faces at the hands of the gangs, whilst in paragraph 25 the Adjudicator spreads his net wider.

11) In relation to the Article 8 grounds the Adjudicator appears to have accepted that the appellant had established a private life in the United Kingdom and that there would be an interference with her right to physical and moral integrity. He included in his assessment the risks to her physical and mental health. He found that it would be disproportionate to return her to Romania. He allowed the appeal on both Article 3 and Article 8 human rights grounds.

12) Grounds of appeal

13) The appellant's grounds of appeal submit that the Adjudicator erred in relation to his consideration of sufficiency of protection by concentrating on systems of protection without addressing the ability of the systems to protect, failing to consider sufficiency of protection in the context of the appellant's individual needs and concluding that there was no Convention reason. It is argued that in so far as the Adjudicator found that the appellant did not have a well founded fear of persecution, he was saying that she did not have such a fear for a Convention reason. If not, and the finding is interpreted as a conclusion that the appellant had no well founded fear of persecution at all, then the Adjudicator erred in reaching this conclusion. The grounds argue that these are material errors, presumably of law.

14) The respondent's grounds of appeal argue that, on the objective information before him, the Adjudicator should have come to the conclusion that the Romanian authorities would provide the appellant with a sufficiency of protection. In relation to Article 8, they say that the Adjudicator has not had sufficient regard to the objective evidence as to the availability of medical care in Romania and that he speculated as to the lack of appropriate facilities. It is said that it would not be disproportionate to remove the appellant to Romania. It is argued that, in paragraph 19 of the determination, the Adjudicator erred by speculating on the increase in human trafficking as Romania had become part of the EU. There were grounds of appeal in relation to the Adjudicator's positive credibility finding which are no longer pursued.

15) The authorities and documents before us

The representatives have submitted the following authorities:

- a) CA v Secretary of State for the Home Department [2004] EWCA Civ 1165.
- b) Bagdanavicius and another v Secretary of State for the Home Department [2003] EWCA Civ 1605.
- c) Michael Atkinson v Secretary of State for the Home Department [2004] EWCA Civ 846.
- d) Ivanauskiene v Secretary of State for the Home Department [2002] INLR 1.
- e) Razgar v Secretary of State for the Home Department [2003] EWCA Civ 840.

- f) Razgar v Secretary of State for the Home Department [2004] 2 AC 368.
- g) Horvath v Secretary of State for the Home Department [2001] 1 AC 489.
- h) Sefer Djali v the Immigration Appeal Tribunal [2003] EWCA Civ 1371
- i) Bensaid v the United Kingdom ECHR (2001) 33 EHRR 205.
- j) R v Immigration Appeal Tribunal ex parte Shah and Islam [1999] ImmAR 283.

16) The appellant's representatives have submitted the following material:

- a) UNHCR letter relating to victims of human trafficking dated 17 February 2005.
- b) Expert report from Carmina Drace-Francis dated 18 August 2003.
- c) Medical report from West Sussex Health and Social Care dated 19 August 2003.
- d) Medical report from the Medical Foundation following an examination on 1 September 2003.
- e) Further medical report from West Sussex Health and Social Care dated 2 September 2003.
- f) Psychiatric report from Dr Peter Pierzchniak dated 5 November 2003.
- g) Addendum to psychiatric report from Dr Peter Pierzchniak dated 19 December 2003.
- h) Expert report from Shivaun Scanlan (undated).
- i) Addendum to expert report from Shivaun Scanlan dated 26 April 2004.
- j) Expert report from Professor Tom Gallagher dated 17 April 2004 (we note that this was produced for the same representatives but in relation to another claimant and our attention has not been directed to any written permission from the author for it to be used in this appeal).
- k) Expert report from Paul Cristian Radu dated 18 April 2004 (we note that this was produced for the same representatives but in relation to another claimant and our attention has not been directed to any written permission from the author for it to be used in this appeal).
- l) US Department of State Trafficking in Persons Report dated June 2003.

17) The respondent's representatives have submitted the following material:

- a) Home Office Operational Guidance Note - Romania June 2003.
- b) Romania CIPU Report April 2004.
- c) Romania Country Information Bulletin November 2004.
- d) Letter from the Foreign and Commonwealth Office dated 3 February 2005 enclosing information received from the British Embassy in Bucharest relating to people trafficking in Romania together with a translation of the Romanian Witness Protection Act and a list of NGO Partners.
- e) US Department of State Trafficking in Persons report dated 14 July 2004.
- f) US Department of State Country Report – Romania - Human Rights Practices 2003, dated 25 February 2004.
- g) Extracts from the International Organisation for Migration Report entitled “Who is the next victim” and “vulnerability of young Romanian women to trafficking in human beings”.
- h) International Organisation for Migration Press Briefing Notes 13 April 2004 Entitled “Romania - How Effective Is Assistance to Victims of Human Trafficking?”
- i) International Catholic Migration Commission's first annual report on victims of trafficking in southeast Europe, front-page and section on Romania.
- j) American Bar Association, significant legal developments in Romania dated May 2003.
- k) The Protection Project 2003, Human Rights Report - Romania.
- l) World Health Organization Information on Mental Health Resources in Romania.
- m) International Helsinki Federation for Human Rights - information on appointment of Monica Macovei as Romanian Minister of Justice.
- n) Information on Borsec.
- o) Press release “Judge sued” re Aurelia Bunea.
- p) American Bar Association significant legal developments in Romania dated July 2004.

- q) Central European and Eurasian Law Initiative report on significant legal developments in Romania dated May 2003.

18) Both Counsel have submitted skeleton arguments.

19) It is common ground that these appeals to the Tribunal are governed by the provisions of section 101 (1) of the Nationality Immigration and Asylum Act 2002. An appeal can only be brought on a point of law and, in the light of the judgement of the Court of Appeal in *CA v Secretary of State for the Home Department* [2004] EWCA Civ 1165, we must determine whether there is a material error of law.

20) In paragraph 15 of the determination the Adjudicator refers to the well-known passages in *Horvath v Secretary of State for the Home Department* from the judgements of Lord Justice Stuart Smith in the Court of Appeal and Lord Clyde in the House of Lords. We will not repeat them here; they are set out later in this determination.

21) Errors of law

22) The Adjudicator concluded;

“The objective evidence that has been made available indicates that there is a police force that is receiving sufficient attention to remove some of the old corrupt practices and that there is a law enforcement agency that will put into effect the recent changes and sentencing guidelines with regard to the heinous offence of trafficking of humans. To that end it must be accepted that there is a system of protection within Romania even though the same may have inherent difficulties for historical reasons.”

23) We find that there are material errors of law in the Adjudicator’s reasoning as to sufficiency of protection. First, he reached a conclusion in relation to only part of the required test by considering the existence of systems of protection but not the ability of the systems to protect. Second, the Adjudicator failed to consider and make findings as to whether, in relation to the appellant’s particular needs, the authorities would provide her with a sufficiency of protection. Third, he failed to consider sufficiency of protection in the context of the Article 3 grounds. We agree with Miss Richards that both a Refugee Convention and an Article 3 human rights claim will fail if there is a sufficiency of State protection available to the individual. The authority for this, in relation to an Article 3 claim, is *Bagdanavicius and another v Secretary of State for the Home Department* [2003] EWCA Civ 1605 at paragraph 55.

24) Fourth, the Adjudicator’s conclusions in paragraph 20 of the determination are not clear. It is likely that in referring to the “European Convention” he meant the Refugee Convention. Clarity is not aided by the fact that the Adjudicator’s reasoning in relation to credibility, sufficiency of protection, and Convention reasons are intermixed. We find that, whilst the Adjudicator found that the appellant did not fall

within a particular social group, he failed to come to a clear conclusion as to whether she had a well founded fear of persecution.

- 25) The respondent has not made out the alleged error of law in his ground of appeal which argues that, on the objective information before him, the Adjudicator should have come to the conclusion that the Romanian authorities would provide the appellant with a sufficiency of protection. The error occurred earlier in the reasoning process when the Adjudicator considered the existence of systems of protection but not the ability of the systems to protect. Fifthly, the respondent has made out the material error of law in paragraph 19 of the determination. The Adjudicator erred by speculating on the increase in human trafficking in Romania, apparently because he thought that Romania was already part of the EU. It is not. In his summary of the refusal letter at paragraph 4 (v) the Adjudicator said, “The respondent has also referred to the fact that Romania is now a full member of the EU...” In paragraph 19 he developed his thinking in the light of this assumption and speculated as to the consequences of full membership. This is an error of fact which taints his reasoning.
- 26) The respondent’s grounds of appeal in relation to Article 8 are badly drawn. They only touch on the crux of the problems, which are better identified in Miss Richards’ skeleton argument, that the Adjudicator did not set the correct thresholds for Articles 3 and 8, made assumptions about the care and treatment which might be available in Romania which were not consistent with the objective evidence and failed to take into account that there was no evidence that the appellant was receiving in the United Kingdom the counselling and ongoing treatment which it was suggested she required. Furthermore, we find that the Adjudicator’s reasoning in relation to the Article 3 and 8 grounds is insufficiently clear. These are further material errors of law.

27) Sufficiency of protection - the legal framework

- 28) In *Horvath v Secretary of State for the Home Department* [2001] 1 AC 489 Lord Hope explained that the failure of State protection was integral to the system introduced by the Refugee Convention. The general purpose of the Convention was “to enable the person who no longer has the benefit of protection against persecution for a Convention reason in his own country to turn for protection to the international community.” (Page 495 C-D).
- 29) The well-known passage from the judgement of Lord Justice Stuart Smith in the Court of Appeal (*Horvath v Secretary of State for the Home Department* [2000] INLR pp 15 and 26), endorsed by Lord Clyde in the House of Lords, states,

“In my judgement there must be in force in the country in question a criminal law which makes the violent attacks by the persecutors punishable by sentences commensurate with the gravity of the crimes. The victims as a class must not be exempt from the protection of the law. There must be a reasonable willingness by the law enforcement agencies, that is to say the police and courts, to detect, prosecute and punish offenders.”

30) Lord Clyde went on to say;

“And in relation to the matter of unwillingness he pointed out that inefficiency and incompetence is not the same as unwillingness, and that there may be various sound reasons why criminals may not be brought to justice, and that the corruption, sympathy or weakness of some individuals in the system of justice does not mean that the State is unwilling to afford protection. It will require cogent evidence that the State which is able to afford protection is unwilling to do so, especially in the case of a democracy. The formulation does not claim to be exhaustive or comprehensive, but seems to me to give helpful guidance.”

31) In *Bagdanavicius and another v Secretary of State for the Home Department* [2003] EWCA Civ 1605 at paragraph 55 the Court of Appeal held that,

“Sufficiency of State protection, whether from State agents or non-state actors, means a willingness and ability on the part of the receiving State to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well founded fear.

The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the events.

Notwithstanding systemic sufficiency of State protection in the receiving State, the claimant may still have a well founded fear of persecution if he can show that the authorities know or ought to know of circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require.

The same principles apply to claims in removal cases of risk of exposure to Article 3 ill-treatment in the receiving State.

Sufficiency of State protection is not a guarantee of protection from Article 3 ill-treatment any more than it is a guarantee of protection from an otherwise well founded fear of persecution in asylum cases - nor, if and to the extent that there is any difference, is it eradication or removal of risk of exposure to Article 3 ill-treatment.

Where the risk falls to be judged by the sufficiency of State protection, that sufficiency is judged, not according to whether it would eradicate the real risk of the relevant harm, but according to whether it is a reasonable provision in the circumstances.

Notwithstanding such systemic sufficiency of State protection in the receiving State, the claimant may still be able to establish an Article 3 claim if he can show

that the authorities there know or ought to know of particular circumstances likely to expose him to risk of Article 3 ill-treatment.”

- 32) None of this is inconsistent with the passage relied on by Mr. Southey in *Michael Atkinson v Secretary of State for the Home Department* [2004] EWCA Civ 846 where, at paragraph 22, Scott Baker LJ said,

“In the present case, therefore, the question is whether the state of Jamaica is both willing and able to provide reasonable protection to the appellant. The evidence does not raise any real doubt about willingness to provide such protection: the real focus is on its ability to do so. The difficult question is where to draw the line that defines what is an appropriate standard. It is not enough that some individuals will be failed by the State’s criminal justice system, not enough that the State has not been effective in removing risk. There has in my judgement to be a systemic failure that relates at the very least to a category of persons of whom the individual under consideration is one. In this case the focus is on the informers or perceived informers or those who in some way are the target of the gangs or the dons who head them. In my view it is no answer that a State is doing its incompetent best if it nevertheless falls below the appropriate standard. One has to ask whether the State is failing to perform its basic function of protecting its citizens. Does the writ of law run or not?”

- 33) And, at paragraph 33,

“The issue is not in my view however whether the Jamaican authorities have a willingness to deal with the problem but whether they have shown the ability to do so....”

- 34) Sufficiency of Protection: Country information points from the Respondent’s skeleton argument

- 35) Romania is approximately the same size as the UK, with a population of approximately 22½ million people. It is a constitutional democracy with a multiparty bicameral parliamentary system. The US State Department country report on human rights practices 2003 records that the Romanian government generally respects the human rights of its citizens.

- 36) It is accepted that Romania is a country of origin for victims of trafficking in human beings. Research suggests that victims are usually young between the ages of 18 and 24 (on return to Romania): see e.g. the International Catholic Migration Commission’s First Annual Report on Victims of Trafficking in Southeastern Europe (published December 2003), the ICMC report concluded that:

“The vast majority of trafficked victims throughout the region are willing to leave their home country because they believed and accepted a false offer of employment abroad” (page 16)

37) Specifically in relation to Romania, the report recorded at page 102 that;

“Victims are most often recruited by acquaintances. Recruiters are paid for each recruit and may also provide transportation to transit locations. In most other cases, victims reply to newspaper advertisements.”

38) These conclusions are echoed in the International Organisation for Migration’s (IOM) publication “Who is the next victim?” (2003). The IOM’s research, conducted between April and August 2003 and specifically concerned with Romanian trafficking victims, found that the majority of victims are between 15 and 25 (those at the extreme ends of this cohort being described as “at less of a risk than others”). The IOM records that:

“Vulnerability to trafficking is primarily shaped by a strong desire to seek a job abroad and also from a propensity to break official and informal rules”

and

“Trafficking is essentially linked to migration. People are looking for jobs, higher wages, opportunities for personal fulfillment, and they do not only look around their neighbourhood..... When there is a high demand for jobs, several suppliers will soon crowd to satisfy people’s dream. But not all suppliers are bona fide merchants. Some of them are in the right place at the right time to take advantage of the dreamer. They do not sell jobs, but human beings. They promise young women to fulfill their dream of a well-paid job in a rich country abroad.”

39) Over recent years the Romanian authorities have shown an increasing commitment to tackling the problem of human trafficking. One of the most important steps taken by the Romanian authorities has been the introduction of a legal code for the prohibition and prevention of trafficking: Law 678/2001 (“Law on the Prevention and Combat of Trafficking in Persons”). Its provisions include; the imposition of obligations on a wide variety of Public Authorities, Government Departments and NGOs to take action to prevent trafficking in persons (Chapter II); the creation of various criminal offences arising out of trafficking activities (Chapter III), with penalties including imprisonment up to 25 years for certain violations as well as the forfeiture of assets obtained from the commission of the offences; and measures for the protection and assistance of victims of trafficking (Chapter V) including the requirement that victims of trafficking should have their privacy and identity protected and that they are entitled to physical, social and psychological assistance.

40) The Romanian authorities have also introduced a law allowing for the protection of witnesses: Law 682/2002 which came into effect on 19 December 2002. This provides for, inter alia, the protection of the witness’s identity, change of identity and appearance, change of domicile, change of employment and the payment of money until alternative employment is obtained. The American Bar Association noted in

July 2004 that 11 witnesses who had provided investigators with information leading to the discovery of dangerous criminal networks and their families had been placed in protection programs.

41) The US State Department report for 2003 records, inter alia, that

- a) The government had increased its efforts against trafficking
- b) Police officers continued to pursue cases via their Human Trafficking Task Force
- c) Police had assigned 15 officers at headquarters in Bucharest and over 87 officers (of whom 42 were women) were assigned to 15 zonal centres across the country to investigate trafficking.
- d) In the first six months of 2003 488 individuals were under investigation for violations connected with trafficking, 130 suspects had been arrested and 184 trafficking networks dismantled.
- e) The government reported 50 anti trafficking convictions during the year.
- f) During September 2003 the government participated in the launch of the SECI Regional Anticrime Centre's Operation Mirage 2003 (following the success of an earlier operation in the summer of 2002).
- g) During the operation police in Romania checked 5920 controlled places, identified 463 victims, initiated 319 criminal procedures and arrested or charged 207 traffickers
- h) Border crossing checks were undertaken, with border police questioning victims and attempting to identify traffickers.

42) The US State Department Trafficking in Persons Report 2004 places Romania in Tier 2 with, for example Finland, Israel and Switzerland. Although the Romanian authorities did not, according to this report, fully comply with all of the minimum standards for the elimination of trafficking, the US State Department recorded that the government "was making significant efforts to do so. This report recorded inter alia that:

- a) There was a significant increase in the number of trafficking convictions.
- b) Romania's Law on trafficking specifically covered both sexual and nonsexual exploitation with penalties that are sufficiently severe.
- c) The government reorganised the police unit for combating organised crime to provide more personnel for trafficking issues.
- d) In August 2003 over 100 officers (including 42 women) were assigned to trafficking in persons and all of them received specialised training in trafficking in persons.
- e) In 2003 the police dismantled 283 criminal trafficking networks.
- f) The Public Administration Ministry assigned several prosecutors to pursue trafficking cases.
- g) The government took steps to reduce corruption amongst border police by psychological testing, ethics briefings, the introduction of a best practice manual, the issue of standard identification badges, random integrity tests and checks of

personal belongings and the introduction of a hotline for travellers to report corruption by border officials.

- h) The police unit initiated a database in 2003 with the support of the UK to track trafficking in persons.
- i) The Ministry of Education and Research ran a number of educational programmes on trafficking in 2003, school directors, teachers and educational counsellors received instructions on how to provide anti trafficking guidance to students during tutorial classes and parents during teacher-parent conferences and regional education commissions monitored teachers' implementation of trafficking prevention provisions.

43) According to the US State Department 2003 report, police generally follow the law and internal procedures. Corruption is reported to be a continuing problem, but:

“The government addressed these problems by increasing training to create a more professional police force and by punishing corruption. During the year, 1627 policemen (of whom 459 were officers and 1175 were agents) were found to have engaged in misconduct, resulting in 1715 sanctions to 491 officers and 1244 agents. At year's end, 30 policemen (5 officers and 25 agents) were undergoing criminal prosecution for abusive conduct and abuse of office, and 12 policemen (3 officers and 9 agents) were under criminal investigation for acts endangering life and health.

In June, 50 police officers were transferred for six years to the National Anti-corruption Prosecutors Office to strengthen the institutional framework for fighting corruption and ensure the efficient functioning of the office. The office sought to recruit an additional 10 police officers.”

44) And in relation to the judicial system:

“The government has taken measures to fight systemic corruption. In April, it passed an anti-corruption package of laws that defined conflict of interest more clearly and more extensively for public officials. The National Anti-corruption Prosecutors Office (PNA) is authorised to investigate charges of corruption by high officials or corruption that involve more than approximately 100,000 US dollars (3.5 billion lei) or seriously disturbed the activity of public authorities. Since September 2002, the PNA reportedly investigated or prosecuted 32 judges and 12 prosecutors. 5 judges and 2 prosecutors were convicted for corruption; the trial of 12 judges and 4 prosecutors were in the final phase of appeals. 34 notaries and 40 court enforcement officers were also investigated, and 12 notaries and 4 court enforcement officers sent to trial”.

45) The government has also recently appointed Monica Macovei, the former chair of the Romanian Association for the Defence of Human Rights in Romania, as the new Minister of Justice. Ms Macovei, who is not affiliated to any political party, is a longstanding human rights campaigner who has stated that combating corruption must be a priority for the National Anticorruption Prosecution Office.

- 46) There is an Ombudsman's office which works to protect citizens from abuse by public officials. Between January and September 2003 it received 5400 complaints.
- 47) There are a number of domestic and international human-rights groups operating within Romania freely without government interference.
- 48) The law within Romania provides for freedom of movement within the country and the US State Department report for 2003 records that the government generally respects this right in practice. Romanian citizens have the right to change their residence to any place in the country in accordance with law 105/1996 on population records and ID cards.
- 49) IOM Press Briefing Notes (13 April 2004) "Romania - How Effective Is Assistance to Victims of Human Trafficking?" records the results of a research study into the effectiveness of assistance to sex industry victims of human trafficking who had returned to Romania. It records that "perhaps the most important conclusion of the study is that many victims can be successfully reintegrated, achieving both social rehabilitation and social independence". This study examining the professional and social reintegration of 113 trafficking victims who were assisted by IOM Bucharest and its NGO partners in 2002. In 2002 IOM helped 210 victims of trafficking returned to Romania of whom 144 accepted referral to a partner NGO for assistance. It found that the average duration of assistance provided to victims was six months (61% were assisted for six months or longer); that 94% of the victim's received psychological counselling; that 95% received social assistance, and that 46% received medical assistance.
- 50) Some of the assistance available to victims of human trafficking is described in the ICMC report. This records, for example, the existence of six shelters for trafficked victims in Romania. One of these shelters, in Pitesti, offers long-term shelter (lodging and services for up to two years); the others provide short-term and midterm shelter. Each shelter provided voluntary, confidential and free of charge medical care for trafficked victims. Each also provides psychological counselling (most trafficking victims show signs of PTSD according to the ICMC). The report records that "Service providers have not reported any difficulties in obtaining psychiatric care for beneficiaries" (page 106). Shelters also arrange for vocational training and employment assistance (page 107).
- 51) Sufficiency of protection: Country information points from the Appellant's skeleton argument
- 52) The scale of people trafficking in Romania is enormous. The International Organisation for Migration estimates that as many as 20,000 women are trafficked from Romania each year.

- 53) In contrast it appears that there are very few cases of police action against traffickers resulting in a conviction. In particular recent statistics also suggest a small number of convictions. For example, it appears that although in 2003 there were individuals sentenced under anti trafficking laws, there were only 49 such cases. That low number of prosecutions is consistent with the fact that there is a significant problem with the enforcement of laws in Romania. In particular the UK embassy has confirmed that there are problems with the implementation of anti trafficking law.
- 54) The statistical evidence cited in the two subparagraphs above indicates that the Romanian authorities failed to deter people traffickers as traffickers appear to act with almost complete impunity. That is not surprising in light of the difficulties in enforcing the law in Romania.
- 55) One factor that is relevant to the issue of sufficiency of protection is the corruption that undermines police efforts to prevent trafficking. Significantly, the Secretary of State's country assessment cites evidence suggesting that this has not reduced. Corruption is relevant to the deterrent provided by a system of protection as it means that the deterrent effect of the system of law and order is undermined if traffickers know that they will be able to avoid liability by paying a bribe.
- 56) Some of the most significant steps intended to protect women have only been taken relatively recently. For many years after the fall of Communism there were no serious attempts to address trafficking. For example, it was only in December 2001 that a law for combating trafficking in human beings was introduced. Similarly, it was only in November 2001 that the Romanian government began to allocate space in shelters to victims. As a consequence even the Secretary of State says that current protection efforts are "limited". The Secretary of State also says that the police have "begun" to recognise that Romania is a country of origin for trafficking implying that the process is not complete.
- 57) The fact that the Romanian authorities have only recently started to take steps to address trafficking is shown by the fact that specialist prosecutors have not yet been appointed. In addition flaws in the judicial system must still to be addressed.
- 58) The progress has been sufficiently slow that the Secretary of State acknowledges that trafficking is a "problem" although he also states that steps have been taken to address it. It is not surprising that it is a problem as criminals in Romania are often better organised than the law enforcement system.
- 59) The lack of progress with changing attitudes to trafficking is shown by the fact that victims of trafficking may still be fined for leaving the country illegally.
- 60) Oral evidence from expert witness
- 61) We heard oral evidence from an expert witness, Miss Scanlan. The Appellant's bundle contains her original undated report and an addendum dated 26 April 2004.

Miss Scanlan is currently employed by OSCE as an expert in the coordination of a jointly funded research programme by OSCE, UNICEF, USAID and the British Council on trafficking from the Ukraine. She also works for the International Labour Organisation in Geneva as a research coordinator for trafficking in Central and Eastern Europe including a rapid assessment study on trafficking of human beings into labour and sexual exploitation from Moldova, Ukraine, Romania and Albania. She is currently based in Warsaw as a senior adviser on anti trafficking issues. Her current focus is on southeastern Europe including Romania and the Ukraine.

- 62) Miss Scanlan adopted her original report and its addendum, confirming these, save that with the advantage of subsequent research she would give more serious consideration to the risk of re-abduction faced by the Appellant. She accepted that there was very little information from Romania about re-trafficked victims. She had not wished to overstate the position in her original report. Since the first report was written, specialist anti trafficking police squads had been set up. There was still much corruption in the local police and little training of the judiciary and procuracy about the new anti trafficking laws. The government was not directly involved in providing shelters for returned trafficked victims, although NGOs did offer some protection. We note that this was not consistent with her later evidence that the government had opened three shelters. The main changes since her report were that the anti trafficking squads were more active in investigating and arresting but there were fewer changes in relation to adequate convictions and sentencing. There were training programmes for prosecutors but it was too early to say whether there was an adequate impact.
- 63) Miss Scanlan accepted that the anti trafficking squads had a reputation for being relatively corruption free, but this was not the case with local law enforcement agencies. She considered that conviction rates were still appallingly low against the number of people being trafficked. Sentencing was often inadequate. Romanian law provided for sentences in excess of three years but many of those convicted received sentences of less than a year or suspended sentences. She did not consider that the current legal system provided a deterrent against trafficking. This was because the legal systems were not fully implemented and did not provide a sufficient deterrent. The state needed to take other measures to address the root causes. She considered that the root causes were inequality between men and women in the labour market, and poverty and social exclusion for particular groups (particularly people in government institutions).
- 64) Miss Scanlan said that if she had to name the main problems they would be the lack of involvement of the judiciary and procuracy and corruption in local law enforcement, usually the first port of call. Even assuming that all levels in the criminal justice system became properly trained, the accused trafficker was often only a minor link in the network. Often successful prosecutions did not dissuade wealthy or powerful people involved in the trafficking rings. Low conviction rates and short sentences were factor leading to inadequate deterrence.

- 65) Miss Scanlan did not believe that the Appellant fell outside the typical age spectrum of those trafficked. Her own research indicated that the age profile of those trafficked depended on the destination country. The very young tended to go to the Balkans, perhaps with a cutoff age of 25, whereas to Western Europe individuals could be into their thirties. She accepted that abduction was relatively rare, but not unheard of. Given the circumstances of the Appellant's case she considered there was a risk that this might happen again. The relevant circumstances were that she had been trafficked on two occasions. There was another risk, that the traffickers would threaten or even injure the Appellant to dissuade her from collaborating with law enforcement agencies.
- 66) It would be possible for the Appellant to move within Romania, but her past experiences indicated that she was found even outside her home area. She would have to carry a valid identity card which depended on registration with the local police. They could be corrupt and in the pay of organised trafficking rings. If she did not carry an identity card she could not access health care or employment. The lack of an identity card or carrying an invalid identity card put her at risk of being fined and, if she did not pay the fine, of prison. If she had an identity card with an address in one town she could not access services in another. If she went to a shelter many of them offered only 10 days residency. Thereafter, most of them did not provide any housing assistance. A shelter might help her obtain a valid identity card, but only in Bucharest. They might give her six-month housing assistance. The government shelters only provided 10 days accommodation unless the individual was continuing to collaborate with the law enforcement agencies. It was rare for any shelter to provide accommodation for more than three months. She knew of one shelter that had provided accommodation for approximately a year.
- 67) Miss Scanlan thought that those who trafficked the Appellant in the past might well have access to information as to her return and might try and trace her. Miss Scanlan did not exclude the possibility that the traffickers were waiting to see whether the Appellant returned. Were they to do so their motives would be to prevent her collaborating with law enforcement agencies, discourage others from escaping their clutches, harm her as a deterrent to others or to re-traffic her. Miss Scanlan was asked whether the attitude of the authorities would be any different because those who trafficked the Appellant were Roma. She was aware of the allegations that Roma gangs were involved in trafficking and thought that the authorities might target Roma who were not involved because of discriminatory attitudes. The police could also be afraid that the Roma gangs were organised and dangerous. There was no indication that Roma gangs were any smarter than their non Roma counterparts.
- 68) In cross-examination Miss Scanlan was shown the Respondent's bundle. She said she was familiar with items 3 to 12 but not the rest. She was aware that 42 specialist police officers had been trained in anti trafficking but not, as appeared in the 2003 US Department of State report (page 143), that in all over 100 officers were involved including 42 women. She conceded that her recollection of the numbers was incorrect and that all those involved had at least a week's training. She was referred

to page 143 of the Appellant bundle and a maximum sentence of seven years for trafficking offences. Miss Scanlan accepted that her research as to inadequate sentences related to the preceding year. She said she had access to data on sentencing which those who prepared the State Department report did not. Furthermore, sentences were often reduced on appeal. She accepted that there was no other data of which she was aware. She said there were not many sentences as long as seven years; few were in excess of one year. When asked what was the most recent hard data on which she relied Miss Scanlan said that it was the State Department report and information from NGOs.

69) Miss Scanlan's attention was drawn to the IOM briefing at page 160 of the Respondent's bundle and the statement that, "perhaps the most important conclusion of the study is that many victims can be successfully reintegrated, achieving both social rehabilitation and social independence". She said she did not agree with this. She did not believe that IOM had any policy of keeping in touch with those who left their shelters.

70) Miss Scanlan was referred to the IOM briefing at page 160 of the Respondents bundle and the passage which states,

"The average duration of assistance provided to the victims was six months. 39% received less than six months, while 61% were assisted for six months or longer. 58% of the victims kept in touch with assistance staff after the formal assistance ended. 94% of the victims received psychological counselling, 95% social assistance, 51% legal assistance and 46% medical assistance. 46% of the victims were diagnosed as having sexually transmitted diseases and 6% were pregnant at the time of their return."

71) It was put to Miss Scanlan that this conflicted with her evidence. She said that most of those who returned stayed in shelters for only a few nights. Only a minority would stay longer. The report could only refer to a few clients. It was pointed out to her that the study was of 113 victims carried out in 2002 and suggested that she was painting too bleak a picture. Miss Scanlan did not agree. A lot of people did not accept shelter because they did not want to be stigmatised. She agreed that good-quality assistance was provided. IOM had one shelter in Bucharest. Other organisations would provide shelter for shorter periods. She accepted that not every victim would want shelter. If the Appellant went to a shelter she would, with the exception of one place, have to cooperate with law enforcement agencies if she wanted to remain for more than a short time. Cooperation involved speaking to the police, making statements and perhaps giving evidence. When it was put to Miss Scanlan that it would be difficult for the Romanian authorities to help without such cooperation, she said that they should provide assistance without strings. If there were no preconditions individuals would be more likely to want to help. Some of them believed that helping the authorities could lead to further trafficking. In reply to the suggestion that she was mistaken that cooperation was a precondition of

admission to all refuges bar one and that the authority's goal was to reduce trafficking, Miss Scanlan said that they could go about it in another way.

72) Miss Scanlan said that the time of her report there were four shelters run by IOM. Currently there are five.

73) It was put to Miss Scanlan that paragraph 6.12 of the Country Information Bulletin of November 2004 said,

“When registering at a new address, the police are not required to contact police in the original area of residence. Police will only contact colleagues in the original area if they wish to obtain the criminal records of that person. It is the view of Alternative Sociale that the victim's fear of registration with the police leading to traffickers discovering their new location is unjustified. Alternative Sociale also stated that victims of trafficking who had been returned to Romania with the help of the International Organisation for Migration were interviewed by the Border Police together with a social assistant and a psychologist. Victims are returned to their original area only if there is no risk involved. Otherwise they are sent to shelters in Bucharest or in Iasi. Whilst Alternative Sociale were unable to guarantee the integrity of regular policeman, they did state that their view of the Organised Crime Brigade was positive.”

74) Miss Scanlan accepted that the Appellant would be able to register in another area and that a shelter would help her. However, local police could act as informers and could be approached by traffickers to whom information was sold. She accepted that there were sanctions against corrupt police officers and that 30 were convicted in 2003. There was training for anti-corruption officers. She accepted that judges were also prosecuted, on a small scale. It was early days to assess the impact. She accepted that the new Minister of Justice was an active human rights campaigner but had not been aware of her appointment.

75) Miss Scanlan was asked about the risk that the Appellant might be re-trafficked. Her view was that it was not just chance that led to traffickers to find the Appellant in Timisoara. She thought it likely that they had information and had been looking for her. She accepted that most trafficking was as a result of individuals seeking economic betterment, the government was seeking to address this through education and it was unlikely that a victim who had been duped in the past would be duped again. She accepted that there was no evidence specific to the Appellant to show that the traffickers were looking for her but she thought that in practice the majority of those trafficked who returned to Romania were pursued by those who trafficked them. The shelters needed to have security arrangements to protect those living there. Her experience was that there was no significant number of revenge attacks or abductions of those living in shelters, probably because of the security arrangements they had put in place. There was little evidence available as to what happened to individuals after they left the shelters, although some evidence that some had been re-

trafficked. Some shelters said that 30 to 40% of those who left them were re trafficked. Asked for evidence to support this assertion, Miss Scanlan thought it might be in an HCHR or an UNICEF report, although she did not have these.

76) It was put to Miss Scanlan that if 20,000 Romanian women were trafficked each year, what interest would the traffickers have in the Appellant were she to return. Miss Scanlan thought that their interest would be to persuade her not collaborate and to make an example of her to preserve their own credibility. Miss Scanlan agreed that the Appellant was not likely to be at risk while she stayed in a shelter, but the witness protection programme would not help her after the conclusion of any proceedings. She accepted that the US Department of State Trafficking in Person's Report (page 124 of the Respondent's bundle) did refer to physical protection being provided to five victims of trafficking in the witness protection programme and this was likely to be correct.

77) Conclusions in relation to the evidence of the expert witness

78) We find that Miss Scanlan has an expertise in relation to trafficking, including trafficking of women for the purpose of prostitution in Central and Eastern Europe. Currently she is working on a research programme on trafficking from Ukraine. From May 2002 she has been involved in a rapid assessment study on trafficking from Moldova, Ukraine, Romania and Albania. She does not appear to have lived or worked in Romania for any length of time or been involved in any project which concentrated exclusively on the problems arising from trafficking from Romania. Her evidence has been helpful but, as she admitted, in some areas is not as up-to-date or detailed as some of the other material before us. There were some inconsistencies in her evidence, but not sufficient to cast serious doubts over her broad expertise. We accept her evidence as a helpful overview, whilst concluding that there is, in a number of important areas, more up-to-date and detailed information in the other material before us.

79) Sufficiency of protection – conclusions

80) The International Organisation for Migration estimates that as many as 20,000 women are trafficked from Romania each year. It is not clear how they arrive at this figure. It is referred to in the April 2004 CIPU report at paragraph 6.59. However, it is clear that many women are trafficked for the purposes of prostitution. This is in a country of approximately 22 ½ million people.

81) Women trafficked for prostitution usually fall within the ages of 18 and 24 (the International Catholic Migration Commission) or 15 and 25 (The International Organisation for Migration). The first of these reports refers to age on return to Romania and the latter describes those at each end of the spectrum as being less at risk. All but very few are deceived on hopes and promises of a better and sometimes more glamorous job and life in another country, rather than forcibly abducted. Most are also recruited by somebody they know.

82) We find that the Romanian authorities have shown an increasing commitment to tackling the problem of human trafficking. The Law on the Prevention and Combat of Trafficking in Persons came into force in 2001. It imposed obligations on Public Authorities, Government Departments and NGOs to take action to prevent trafficking in persons. New criminal offences were created relating to trafficking activities with penalties including imprisonment up to 25 years and the confiscation of assets. Victims of trafficking were to have their privacy and identity protected and be entitled to physical social and psychological assistance. A witness protection law with wide-ranging provisions came into effect in December 2002. The American Bar Association Report shows that witnesses have been placed in protection programs.

83) Mr. Southey suggests that there are very few cases of police action against traffickers resulting in conviction and that recent statistics suggest a small number of convictions. He refers to only 49 anti trafficking cases in 2003. We do not agree, and prefer the information contained in the US State Department report for 2003 which shows 50 anti trafficking convictions (our emphasis). Doubtless there are likely to be problems with the implementation of anti trafficking laws, as the UK embassy suggests. However, the same US State Department report shows that the government increased action against trafficking and the existence of a Human Trafficking Task Force with 15 Staff at in its headquarters in Bucharest and more than 87 officers, of whom 42 were women, assigned to 15 centres across the country. In the first six months of 2003 488 individuals were under investigation for violations connected with trafficking, 130 suspects were arrested and 184 trafficking networks dismantled. During the SECI Regional Anticrime Centres Operation Mirage in September 2003 which followed an earlier operation in 2002, 5920 controlled places were checked, 463 victims identified, 319 sets of criminal proceedings initiated and 207 traffickers charged. Border crossing checks were undertaken with border police questioning victims and attempting to identify traffickers.

84) It is significant that the US State Department Trafficking in Persons Report for 2004 places Romania in the same category as Finland, Israel and Switzerland. Although it does not fully comply with all of the minimum standards for the elimination of trafficking, the report expresses the view that the government “was making significant efforts to do so”. It records a significant increase in the number of trafficking convictions, describes the relevant penalties as sufficiently severe, records the reorganisation of the police unit for combating organised crime and the increased resources provided to this unit and the increased number of 283 criminal trafficking networks dismantled. Special prosecutors have been assigned to pursue anti trafficking cases.

85) Clearly, not all people traffickers have been deterred. However, in the light of much increased government activity it can no longer be said, as Mr. Southey argues, that traffickers appear to act with almost complete impunity.

- 86) The government has taken action and, in 2003, ran a number of educational programmes to provide anti trafficking guidance to students and their parents.
- 87) Corruption is still a problem in Romania, particularly at local police level. However, it has not been suggested that corruption is a problem with the anti trafficking task force. The government has taken steps to reduce corruption amongst border police by psychological testing, ethics briefings, the introduction of a best practice manual, the issue of standard identification badges, random integrity tests and checks of personal belongings and the introduction of a hotline for travellers to report corruption by border officials. In 2003 the police set up a database to track trafficking in persons, with the support of the UK. Increased training is being provided for the police force generally and action taken to punish corruption. The US State Department report for 2003 reports a substantial number of investigations and sanctions taken against police officers and 42 criminal investigations and prosecutions in progress. 50 police officers were transferred to strengthen the National Anti-corruption Prosecutors Office.
- 88) There have been problems with systemic corruption in the judiciary. The reports show that the government is taking steps to fight this. The government has implemented an anti-corruption package of laws and the National Anti-Corruption Prosecutors Office has been set up. 32 judges and 12 prosecutors have been investigated or prosecuted and 5 judges and 2 prosecutors convicted for corruption. 34 notaries and 40 court enforcement officers have been investigated and 12 notaries and 4 court enforcement officers sent to trial.
- 89) The government has appointed a non politically affiliated and well-known human rights activist as the new Minister of Justice. There is an Ombudsman's Office which, between January and September 2003, received 5400 complaints. Domestic and international human-rights groups operate within the country without government interference. Citizens have a right to change their place of residence within the country.
- 90) The IOM press briefing note of 13 April 2004 records the result of research into the effectiveness of assistance to sex industry victims of human trafficking who have returned to Romania. It states, "perhaps the most important conclusion of the study is that many victims can be successfully reintegrated, achieving both social rehabilitation and social independence". The report examined the reintegration of 113 trafficking victims who were assisted by IOM Bucharest and its NGO partners in 2002. In 2002 IOM helped 210 victims of trafficking returned to Romania. The average duration of assistance provided was six months. 61% were assisted for six months or longer, 94% of the victims received psychological counselling, 95% received social assistance and 46% medical assistance.
- 91) At the date of the information provided to us there were six shelters for trafficking victims in Romania one of which offered shelter for up to two years. The others provided short-term and midterm shelter. All the shelters provided voluntary

confidential and free medical care together with psychological counselling. The report records that the shelters had not reported any difficulties in obtaining psychiatric care for beneficiaries. They also arranged vocational training and employment assistance.

- 92) Mr. Southey accepts that there have been significant steps intended to protect women, but argues that these have only been taken relatively recently. We accept that most steps appear to have been taken in the last five years with levels of activity increasing during that period. He has not been specific as to what flaws in the judicial system remained to be addressed. Trafficking is still a problem but it is clear that the Romanian authorities have taken wide ranging steps to address not only the immediate problem but related problems such as police and judicial corruption

93) Convention reason: particular social group

- 94) In R v Immigration Appeal Tribunal ex parte Shah and Islam [1999] Lord Steyn said,

“Generalisations about the position of women in particular countries are out of place in regard to issues of refugee status. Everything depends on the evidence and findings of fact in the particular case.”

and

“The distinctive feature of this case is that in Pakistan women are unprotected by the state: discrimination against women in Pakistan is partly tolerated by the state and partly sanctioned by the state. Married women are subordinate to the will of their husbands. There is strong discrimination against married women, who have been forced to leave the matrimonial home or have simply decided to leave. Husbands and others frequently bring charges of adultery against such wives. Faced with such a charge the woman is in a perilous position. Similarly, a woman who makes an accusation of rape is at great risk. Even Pakistan statute law discriminates against such women.”

- 95) In his skeleton argument Mr. Southey argued that, in relation to a Convention reason, and contrary to the Adjudicator’s conclusion that no such reason existed, the Appellant belonged to a particular social group. The social group was “people who had been trafficked”. The required immutable characteristic, which could not be changed, was the fact that she had been trafficked. It was because she was a member of that social group that she would be targeted. Alternatively, causation was made out because she would be denied the protection generally available in Romania because she was someone who had been trafficked. We note that he did not seek to argue that there was a particular social group of “women in Romania” or even “women in Romania who have been trafficked”. We find that the Adjudicator was right to conclude that the Appellant did not fall within a particular social group. Firstly, “people who have been trafficked” falls foul of the principle that the group must exist independently of the persecution it fears. Such a group is defined by no

more than the persecutory element of trafficking. Secondly, for reasons to which we will return in connection with sufficiency of protection, the country material before us does not establish discriminatory treatment of the victims of trafficking by the Romanian state analogous to that of women in Pakistan.

96) Is the Appellant at risk on return from traffickers?

97) We must consider whether the Appellant still at risk from people traffickers either generally or from those who trafficked her in the past.

98) We find that the Appellant does not face a real risk of being trafficked either by those who trafficked her in the past or anyone else. The country information is clear that the vast majority of those who are trafficked go willingly, hoping for a better job and a better life in a different country. They are deceived as to what will happen to them. The Appellant has not suggested that she could be deceived in this way. She was not deceived in the past and, knowing what she knows now, it is inconceivable that she could be duped in the same way as most victims of traffickers. We cannot find any information as to the number of women who have been kidnapped as opposed to going willingly, but the country information shows that the numbers are likely to be small. When the Appellant was first kidnapped it may be that she was a random target of opportunity, spotted on the street whilst going about her normal business. She has not suggested that she was identified or targeted in any other way. It is, we accept, speculation, but it would not be surprising if the traffickers targeted her because they knew she was a single woman living on her own and perhaps also a person who had lived in an orphanage and was not likely to have close family. She comes from a small town. Page 212 of the Respondents bundle shows that Borsec has a population of only 2864.

99) The country information shows that after the Appellant escaped on the first occasion, returned to Borsec, and then moved to Timisoara, she had the misfortune, unbeknown to her, to move to an area notorious for the activities of traffickers. Against this background it may be that it was less than pure mischance when she bumped into those who had trafficked her. The Appellant has not said that she has any evidence that the same traffickers were looking for her in Borsec, when she moved to Timisoara, or since her arrival in the United Kingdom.

100) The country information does not support the contention that the Appellant now falls within the profile of the majority of women trafficked for prostitution. The majority of victims are between 18 and 24. She is nearly 28 years of age and, although we accept Miss Scanlan's evidence that this does not put her totally outside the danger zone, it is a risk reducing factor.

101) The country information does not support the contention that those who trafficked the Appellant are likely to be looking for her in order to take revenge, because she managed to escape on two occasions, either as an example to deter others or to prevent her giving evidence against them. If the Appellant returns to Borsec it is not

likely that those who trafficked her in the past are looking for her, will ill treat her or attempt to re-traffic her. If she decides to go to the police she might be well advised to approach one of the specialist anti-trafficking squads rather than the local police. If she does approach them, and fears for her safety, there are now witness protection programmes to help her. There is no evidence to show that, even if some of the police in Borsec are corrupt, they would have any reason to think that it would be profitable to pass on information about her. She went to the police in Borsec when she escaped on the first occasion. She was living at the same address and did not claim that the traffickers traced her, with or without the assistance of the police, although we accept that she did not stay long.

102) If the Appellant chooses not to go to Borsec or to a refuge but to another part of Romania she will have to register with the authorities in order to work and access health care. The country information does not show that the police in Borsec will be informed that she has registered in another area. The evidence does not show that, even if some of the police in the new area are corrupt, they would have any reason to think that it would be profitable to pass on information about her to traffickers.

103) If the Appellant prefers to go to a refuge, there are a number of refuges for trafficked women. Some are run by the government and some by NGOs. There is no information which shows that those who seek and need refuge are turned away. We are not persuaded that all those who enter refuges have to make statements or attend court to give evidence. It is likely that many will be required to make statements to the authorities, but it is not clear what proportion will then be required to attend court to give evidence. The country information, with which Miss Scanlan agreed, shows that, because of the security arrangements which the refuges have put in place, the Appellant is likely to be safe even without calling on a witness protection programme. The Appellant may not wish to remain in a refuge for more than a short period. However, if she needs to stay longer, there is at least one refuge where she can do so, for at least a year.

104) We find that the Appellant does not face a real risk of being trafficked by different traffickers. She would not go willingly. She is outside the high risk age-group profile. Because of her experiences she is more likely to be risk conscious. What happened to her in the past is not likely to be readily apparent. Although she is a single woman and notwithstanding her past experiences the country information does not suggest that all or a significant proportion of single women in Romania face a real risk of forced kidnapping and trafficking.

105) Sufficiency of protection on the facts in this appeal

106) Having found that the Appellant is not at risk on return to Romania either from those who trafficked her in the past or any other group, it is not reasonably likely that she will require protection from the authorities. However, should she need protection, we are persuaded that a sufficiency of protection will be available to her. In the particular circumstances of the Appellant's case there is both a willingness and

an ability on the part of the state to provide her with a reasonable level of protection. We also find that, as a general rule, the authorities have both a willingness and an ability to provide a reasonable level of protection for victims of trafficking in Romania. This conclusion may be displaced if there is compelling current country information which was not before us or new country information emerges. We are grateful to Counsel for their detailed and thorough research. We do not rule out the possibility of an exceptional case where, because of particular circumstances, the individual could be at risk and might not be able to access a sufficiency of protection.

107) Article 3

108) The psychological report dated 19 August 2003 from West Sussex Health and Social Care Trust suggest that the Appellant is suffering from post-traumatic stress disorder and has some symptoms of mood disorder. It recommends that she be released from detention. The report says nothing about the impact of any return to Romania on her mental health. The short follow-up report adds nothing material except to reiterate that she should be released from detention. At one stage the Appellant was detained, but that is no longer the case.

109) The report from Dr Granville Chapman is undated but is based on an examination on 1 September 2003. Dr Granville Chapman does not appear to be a psychiatrist or to have specialist psychiatric training or experience. She suggested that the Appellant might need specialist counselling, recommended release from detention, and expressed the opinion that removal to Romania would have “negative consequences” for the Appellant’s well-being and that there was “a risk” that removal would “aggravate her current symptoms of PTSD and cause a decline in her mental state”. We agree with the submissions from Miss Richards that it is unclear whether this was an assessment which Dr Granville Chapman was equipped to make.

110) In a psychiatric report dated 5 November 2003 and an addendum dated 19 December 2003 Dr Pierzchniak concluded that the Appellant was suffering from PTSD and depressive illness. The depression was evidenced by low mood, anxiety, lethargy, poor sleep, poor concentration, poor memory, hopelessness and suicidal ideation. He considered that she should remain in the United Kingdom and that removal to Romania would adversely affect her mental state. He suggested that the main treatment for PTSD was removal from the stimulus and he regarded that stimulus as “Romania”. His report also said, “Given her current suicidal ideation and her previous attempt she would be at high risk of completing suicide”. He said that she required treatment, but we have no evidence that she has received any such treatment. He provided no information as to her previous attempt to commit suicide.

111) We asked Mr. Southey whether there was any information before us which would shed any light on Dr Pierzchniak’s observation that the Appellant had made a previous attempt to commit suicide. He said that he was not aware of any information other than that which appears at page I-4 of the Appellant’s bundle (the West Sussex Health and Social Care Trust report) which states, “after her first escape

in Romania she took an overdose of sedatives, intending to kill herself, but overestimated their strength and woke up”. The same passage goes on to say, “In Italy she would have killed herself, but was unable to find the means because of her close confinement. She did not speak about any current suicidal ideation, and still has hopes that current efforts to support her case will succeed.” There is no evidence that she has made any attempt to commit suicide since she arrived in United Kingdom in June 2003.

- 112) In *R v. Special Adjudicator (Respondent) ex parte Ullah* [2004] UKHL 26 Lord Bingham of Cornhill said at paragraph 107,

“While the Strasbourg jurisprudence does not preclude reliance on articles other than article 3 as a ground for resisting extradition or expulsion, it makes it quite clear that successful reliance demands presentation of a very strong case. In relation to article 3, it is necessary to show strong grounds for believing that the person, if returned, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment: *Soering*, paragraph 91; *Cruz Varas*, paragraph 69; *Vilvarajah*, paragraph 103. In *Dehwari*, paragraph 61 (see paragraph 13 above) the Commission doubted whether a real risk was enough to resist removal under article 2, suggesting that the loss of life must be shown to be a “near-certainty”. Where reliance is placed on article 6 it must be shown that a person has suffered or risks suffering a flagrant denial of a fair trial in the receiving state: *Soering*, paragraph 113 (see paragraph 10 above); *Drodz*, paragraph 110; *Einhorn*, paragraph 32; *Razaghi v Sweden*; *Tomic v United Kingdom*. Successful reliance on article 5 would have to meet no less exacting a test. The lack of success of applicants relying on articles 2, 5 and 6 before the Strasbourg court highlights the difficulty of meeting the stringent test which that court imposes. This difficulty will not be less where reliance is placed on articles such as 8 or 9, which provide for the striking of a balance between the right of the individual and the wider interests of the community even in a case where a serious interference is shown. This is not a balance which the Strasbourg court ought ordinarily to strike in the first instance, nor is it a balance which that court is well placed to assess in the absence of representations by the receiving state whose laws, institutions or practices are the subject of criticism. On the other hand, the removing state will always have what will usually be strong grounds for justifying its own conduct: the great importance of operating firm and orderly immigration control in an expulsion case; the great desirability of honouring extradition treaties made with other states. The correct approach in cases involving qualified rights such as those under articles 8 and 9 is in my opinion that indicated by the Immigration Appeal Tribunal (*Mr. C M G Ockelton*, deputy president, *Mr. Allen* and *Mr. Moulden*) in *Devaseelan v Secretary of State for the Home Department* [2002] IAT 702, [2003] Imm AR 1, paragraph 111:

“The reason why flagrant denial or gross violation is to be taken into account is that it is only in such a case - where the right will be completely denied or nullified in the destination country - that it can be said that removal will

breach the treaty obligations of the signatory state however those obligations might be interpreted or whatever might be said by or on behalf of the destination state”.

- 113) In *Sefer Djali v the Immigration Appeal Tribunal* [2003] EWCA Civ 1371 Simon Brown LJ said, at paragraph 30,

“That case (“N”) and others like it fall for consideration only under Article 3 and will succeed only in the most extreme in exceptional circumstances. It would seem to me very odd if a markedly more generous approach were brought to bear in respect of those suffering mentally rather than physically.”

- 114) We have found that the respondent is not at risk of inhuman or degrading treatment or punishment from those who trafficked her in the past or similar treatment from anyone else. Even if there was such a risk, the authorities would provide her with a sufficiency of protection. In these circumstances the Article 3 grounds turn on what will happen to her physical and mental health if she is returned or there is an attempt to return her to Romania. We find that she has not established a real risk that she will attempt or commit suicide. It cannot be said that she will receive inferior medical treatment for her mental ill-health in Romania because she is not receiving any treatment in the United Kingdom. If she does need treatment in Romania, we have not been referred to any material which indicates that it will not be available from that country’s health services or that she will not have access to those services if she registers in the area in which she lives. Normally individuals have to pay contributions to the social health insurance fund. It is not clear whether the contributions the respondent has paid in the past will be sufficient or whether, if they are not, she comes within one of the excepted categories who can receive treatment without sufficient contributions. She has not established that treatment will not be available to her. There is positive information that if she goes to stay in a refuge she will be provided with appropriate health care.

- 115) The respondent does not face the most extreme and exceptional circumstances. In the context of Article 3 it cannot be said that there is likely to be a flagrant denial or gross violation of her rights. There is no real risk of a violation of her Article 2 rights.

- 116) Article 8

- 117) In *R v. Secretary of State for the Home Department ex parte Razgar* [2004] UKHL 27 Lord Bingham of Cornhill said at paragraph 17,

“In considering whether a challenge to the Secretary of State’s decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an Adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be

answered by an Adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:

1. Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
2. If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
3. If so, is such interference in accordance with the law?
4. If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
5. If so, is such interference proportionate to the legitimate public end sought to be achieved?"

And, at paragraph 20,

"The answering of question (5), where that question is reached, must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention. The severity and consequences of the interference will call for careful assessment at this stage. The Secretary of State must exercise his judgment in the first instance. On appeal the Adjudicator must exercise his or her own judgment, taking account of any material which may not have been before the Secretary of State. A reviewing court must assess the judgment which would or might be made by an Adjudicator on appeal. In *Secretary of State for the Home Department v Kacaj* [2002] Imm AR 213, paragraph 25, the Immigration Appeal Tribunal (Collins J, Mr. C M G Ockelton and Mr. J Freeman) observed that:

"Although the [Convention] rights may be engaged, legitimate immigration control will almost certainly mean that derogation from the rights will be proper and will not be disproportionate."

In the present case, the Court of Appeal had no doubt (paragraph 26 of its judgment) that this overstated the position. I respectfully consider the element of overstatement to be small. Decisions taken pursuant to the lawful operation of immigration control will be proportionate in all save a small minority of exceptional cases, identifiable only on a case by case basis."

- 118) As we have already mentioned, in relation to the Article 8 grounds the Adjudicator appears to have accepted that the appellant had established a private life in the United Kingdom and there would be an interference with her right to physical and moral integrity. He included this in his assessment of the risks to her physical and mental health. He found that it would be disproportionate to return her to Romania. It has not been suggested that the respondent has a family life in the United Kingdom. We accept that she has a private life. The factual elements which are

relevant to the Article 3 grounds also fall to be considered in relation to Article 8. We find that the proposed removal would constitute interference by a public authority with the exercise of the Appellant's right to respect for her private life. We find that such interference would not have consequences of such gravity as potentially to engage the operation of Article 8. If we are mistaken in this regard, then such interference would be in accordance with the law, necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others and proportionate to the legitimate public end sought to be achieved.

119) Reasons for reporting

120) This determination is reported for our reasoning and conclusion that a sufficiency of protection is available to the victims of trafficking in Romania. As a general rule, on the evidence before us, there is both ability and willingness on the part of the state to provide a reasonable level of protection. We do not rule out the possibility of an exceptional case where, because of particular circumstances, an individual could be at risk and might not be able to access a sufficiency of protection.

121) Conclusion

122) We dismiss the appeal of the appellant and allow the appeal of the respondent (the Secretary of State).

P R Moulden
Vice President