

JD

Heard at Field House on:

KS (IFA - Albanian - Blood
Feud) Kosovo CG [2003] UKIAT
00208

7 October 2003

Dictated on:

9 October 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

05.11.03

Before:

**MR P R LANE (CHAIRMAN)
MRS A J F CROSS DE CHAVANNES**

Between

MR KUTJIM SADRIAJ

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Appearances:

For the Appellant: Ms S. Jolly, Counsel, instructed by the Law Centre
(NI) Belfast.

For the Respondent: Mr S Bilbe, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The Appellant, Kutjim Sadriaj, a citizen of the Federal Republic of Yugoslavia (Kosovo) appeals with leave against the Determination of an Adjudicator, Mr D S Corke, sitting in Belfast, in which he dismissed on asylum and human rights grounds the Appellant's appeal against the decision of the Respondent to give directions for his removal from the United Kingdom.

2. The Appellant arrived in the United Kingdom without evidence of lawful entry and sought asylum on 16 February 2000. He said that he had had to leave Kosovo in 1999 because of the Serbs. He further said that he was afraid to return because his uncle had killed an Albanian man in the Appellant's home village who was a spy working with the Serbs. The Appellant thus feared becoming the victim of a blood feud.
3. As the Adjudicator observed in paragraph 6 of his determination, the Grounds of Appeal :-

'...acknowledge that there is no 1951 Convention appeal. The Grounds of Appeal are that returning to Kosovo without adequate accommodation would be inhuman and degrading in terms of Article 3 of the ECHR. In addition, under Article 8, the expulsion would not be in accordance with the law as the Appellant has a child born on 23 December 2000 who is therefore an Irish citizen who may not be expelled from the UK'.

4. At the hearing, the Appellant's representative 'added another ground, that it would be contrary to the United Kingdom's obligations under Article 3 of the ECHR to return the Appellant and his family to face a blood feud' (determination paragraph 6).
5. At paragraph 8 of the determination the Adjudicator sets out the Appellant's account. The Appellant was born in Brekoc, a village near Gjacova in Kosovo. He was of Albanian ethnicity. In 1997, the army came to the family home and arrested and mistreated his father and uncle. When the father and uncle came out of prison they discovered that a fellow Albanian named Palok Gjeloshi had been responsible for informing the Serb authorities that the pair were involved in the Kosovan independence movement. The uncle swore revenge on Palok Gjeloshi. In 1999 the uncle killed Palok's brother, Martin, by shooting him dead in the street. The uncle then went into hiding, since he was afraid that the dead man's family would take revenge on him for his actions. The Appellant and his brother and father were also afraid. They hid in their house until February 1999. On one occasion, Palok Gjeloshi came to their home with a gun, looking for male members of the family, but his mother told him that they were not there. Around 18 February 1999, the family was forced to leave its home when the Serb army arrived with tanks. In this incident, the uncle was burned to death when the house was burned down. The Appellant thought that his uncle might have been targeted for killing Martin Gjeloshi. The Appellant and his wife fled and eventually arrived in the United Kingdom. The Appellant said that he was concerned about the 'unstable' situation in Kosovo and also was afraid that the family of the murdered man would try to kill the Appellant, since blood feuds between Albanian families could go on for generations. The Adjudicator's findings on the question of Article 3, (which is the only

matter raised in the Grounds of Appeal and subsequently pursued before the Tribunal) are as follows:-

'27. I am willing to accept as credible and reliable the Appellant's account of past events. He was driven from Kosovo by the actions of the Serbs. I do not, however, accept his reasons for not returning. There has just been a civil war. The background evidence does not reveal the level of ongoing feuds which would be the logical result of people acting as the Appellant indicated. Taking his version of events as true, the Appellant's uncle killed a collaborator. There is a material inconsistency as to whether that was at home or in the street. It is not remotely plausible that the family of a collaborator would be in any position to take revenge. It is highly implausible that the family of such a person would even go back to the same village. If they did, and did make any threats against the Appellant, then he could seek the protection of UNMIK -KFOR. If he does not wish to do that, then he could live elsewhere in Kosovo without that being unduly harsh. It is not reasonably likely that the family of a collaborator would be able to seek him out elsewhere. The claim under Article 3 must fail. Insofar as that claim depends on inhuman or degrading treatment on return, the act of being returned does not per se amount to that. Many thousands of people have returned. Having to return does not meet the minimum threshold for Article 3, even in the Appellant's circumstances'.

6. Ms Jolly referred the Tribunal to a number of copy documents, which were before the Adjudicator, on the question of blood feuds in Kosovo.
7. At page 78 of the Tribunal bundle, is an extract from *Kosovo: A Short History* by Noel Malcolm. Here, we find the nature of the Northern Albanian blood feud described as follows:-

'[The blood feud] is one of the most archaic features of Northern Albanian society resembling the codes that govern other isolated societies in the Mediterranean region (such as Corsica) or the Northern Caucasus. What lies at the heart of the blood feud is a concept alien to the modern mind, and more easily learned about from the plays of Aeschylus than from the works of modern sociologists: the aim is not punishment of a murderer, but satisfaction of the blood of the person murdered, or initially, satisfaction of one's own honour when it has been polluted. If retribution were the real aim then only those personally responsible for the original crime or insult would be potential targets; but instead honour is cleansed by killing any male member of the family of the original offender, and the spilt blood of that victim then cries out to its own family for purification.

Since honour is of the essence, there are strict rules for every step of the feud: one who 'takes blood' to satisfy his (or his family's)

honour must announce that he has done so; a formal truce or best for a set period must be agreed to, if requested for a proper reason (this is a special use of 'bese' the general term for a man's word of honour); and so on...the tradition of the blood feud has never died out in Kosovo: innumerable small-scale feuds have combined in the remoter villages and not all of them were ended by the great series of mass reconciliations arranged by an inspirational settler of blood feuds, Anton Setta in the early 1990s'.

8. In a further extract from a book, *Religion and the Politics of Identity in Kosovo*, by Ger Duijzings found at page 82 of the bundle, we note the following:-

'The judicial means of regulating property and land sales have been ineffective, and thus conflicts over land have been endemic, resulting in a rising number of blood feuds: among the Albanians in Yugoslavia the number of crimes committed in vendettas is not only on the decline but is even rising...there are such feuds in almost every one of the Communes of the province of Kosovo, most of them in the remote villages'.

9. The Tribunal was slightly troubled by the strange nature of the copy at page 82. Although apparently taken from a printed book, many of the words appear to have been altered. Unfortunately, Ms Jolly was not in possession of the original volume, nor was she able to shed any light on the matter.
10. An extract from the *Sunday Times* of August 2001 mentions the murder of almost the entire membership of a Kosovan Albanian family. This is referred to in the context of the 'lawless state that Kosovo is in', with 245 murders in 2000, 'many of them revenge attacks on the Serbian minority by ethnic Albanians, angered by years of repression'. In 2001, up to the date of the article, 'the number of murders has dropped to...77, but it includes a particular brutal outrage, eleven Serbs killed in a bus bombing in February'. As for the killing of the Albanian family the report notes that 'Albanian feuds spare women and children' and that the killing 'is almost certainly linked to the fact that Hamza, Pranvera's 50 year old father used to be a policeman under Serbian rule'.
11. On page 87 we find an UNMIK-KFOR press briefing of February 2001 where 'two murders were reported overnight, one in Malishevo- a Kosovo Albanian killed another in an apparent blood feud dating 25 years'.
12. Ms Jolly also submitted a copy from a website article of 21 August 2003, emanating from an organisation called 'Reliefweb'. The subtitle of the article is 'Murders on the increase in Western Kosovo but no-one is prepared to identify the killers'. The particular incident in question, when a number of people were shot in a gun attack on a car and

shop, appears to have 'had something to do with rival business interests'. There are said to have been 22 murders in the Peja region of Kosovo during 1993. The causes of the crimes 'vary- some of the killings involve organised crime and business rivalries, while others stem from traditional blood feuds between Albanian families'. The article goes on to note that 'ethnic violence involving Albanians and the pockets of Serbs still living in the area remains a disturbing trend. Two young Serbs...were shot dead on 13 August'. UNMIK police are quoted as complaining that witnesses to crimes such as these are hard to come by. Another report from the same website of 19 August 2003 notes 'escalating violence in Kosovo [which] has led to a new war of words between Serbian and Albanian politicians and raised tension between their respective communities'.

13. Against this background, the Tribunal is in no doubt that the Adjudicator was perfectly entitled to conclude that the Appellant would not be at real risk upon return to Kosovo as a result of his uncle's murder of the brother of the Serbian informer and Collaborator Palok Gjeloshi.
14. Reading the documentation in the Appellant's bundle, and the Kosovo Country Assessment of April 2003, it is manifest that the situation in Kosovo has changed fundamentally since the time of the events in 1999, when the Serbian authorities held sway in the province. According to paragraph 4.48 of the Assessment, it appears that less than half of the former 200,000 or so Serbs who were resident in Kosovo, now remain there. Most of the remaining Serbs 'are concentrated in the Northern part of the city of Mitrovica'. Ethnic Serbs 'have been the principal targets for ethnically motivated attacks'.
15. The Tribunal is also aware that UNHCR consider that potential returnees, with special protection needs, include ethnic Albanians who may have been involved with the previous Serb administration. As paragraph 6.91 of the Assessment observes 'there have been reports of ethnic Albanians being targets of harassment and violence in retribution with alleged association or collaboration with the Serbian regime, particularly in the months following the war of 1999-2000. In some cases such accusations may have been based on little more than the fact that the person had done business with the Serbs in the past or that his house was not targeted by Serb forces'.
16. The Tribunal's attention has not been drawn to any utterance by the UNHCR, since the end of the Kosovan war, to the effect that those in need of special protection include those who claim to fear retribution from a blood feud.
17. Before the Tribunal Ms Jolly said that she did not know whether Palok Gjeloshi was even still in Kosovo. Given his vulnerable status as someone who had very actively collaborated with the Serbs, a

significant question mark does, indeed, hang over his continued presence there. Even if he remains in Kosovo, there is quite plainly no evidence to show that he poses a real risk to the Appellant. The incident when Palok went to the home 'looking for male members of the family' was in early 1999, when Serb control still prevailed. With the ending of such control, the massive migration of Serbs from Kosovo, the introduction of KFOR and UNMIK and the recently found ability of the Albanian majority to take action against former collaborators, Palok Gjeloshi's ability to do harm to the Appellant (should he have the inclination) is, to put the matter at its mildest, severely circumscribed. In any event, with the murder of the uncle, whom the Appellant considers to have been 'targeted for killing Martin', any continued interest on the part of Palok Gjeloshi must be speculative, to say the least.

18. The evidence on blood feuds in Kosovo clearly suggests that the practice exists within the more rural, isolated communities. The Tribunal has been presented with no evidence to show any significant blood feuding within the capital, Pristina. The Adjudicator's finding that, if it were necessary to do so, the Appellant could relocate there with his family is, in the Tribunal's view, wholly justified.

19. Ms Jolly quite rightly did not seek to argue Article 3 merely by reference to the position which the Appellant, his wife and child would face if returned today to Kosovo. The situation there has continued to stabilise. Many tens of thousands of former refugees have returned to Kosovo. No evidence has been put forward which would bring the case of this Appellant anywhere near Article 3, in terms of his or his family's individual circumstances. The position of the child as a possible Irish citizen has not been pursued. In any event, in the light of *Mahmood*, it would need to be shown to be unreasonably harsh for the child to accompany the parents to Kosovo. No evidence to this effect is before the Tribunal.

20. This appeal is accordingly dismissed.

P R Lane
Vice President