

**0806242 [2008] RRTA 510 (19 December 2008)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	0806242
<b>DIAC REFERENCE(S):</b>	CLF2008/112013
<b>COUNTRY OF REFERENCE:</b>	Montenegro
<b>TRIBUNAL MEMBER:</b>	James Silva
<b>DATE:</b>	19 December 2008
<b>PLACE OF DECISION:</b>	Sydney
<b>DECISION:</b>	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Montenegro, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights by fax.
3. The applicant applied to the Tribunal for review of the delegate's decision.
4. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### RELEVANT LAW

5. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
6. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### Definition of 'refugee'

8. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:  

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
9. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204

CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

10. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
11. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
12. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
13. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
14. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
15. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
16. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

17. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### *Nationality and Statelessness*

18. The nationality of an applicant can often be readily determined by reference to the applicant's own assertion as to his or her nationality, and/or their passport. Under the Hague Convention (Article 2), it is for each state to determine under its own law who are its nationals. In order to establish whether an applicant is a national of a particular country, it may be necessary in some circumstances to consider the operation of the municipal law of that country. (The King v Burgess; ex parte Henry (1936) 55 CLR 606 at 649; Sykes v Clearly No.2 (1992) 176 CLR 77 at 105-106) The Full Federal Court in Koe v MIMA indicated that in cases where the operation of the country's nationality law is unclear, ambiguous or very complex it may be appropriate for the Tribunal to obtain expert evidence on the operation of the nationality law in question (1997) 74 FCR 508 at 515.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file CLF2008/112013 relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

20. The applicant was represented in this matter by his registered migration agent.

#### **Primary application**

21. According to his protection visa application, the applicant is a male born in the then Federal Republic of Yugoslavia, later Serbia and Montenegro, and now Montenegro.
22. The applicant gives his ethnicity as Montenegrin, and his current citizenship as 'Serbia/Montenegro'.
23. The applicant attended school in Montenegro, and also in Serbia. He completed a trade course in high school. He has lived in various other places in Montenegro and Serbia, for shorter periods He did compulsory military service in the Yugoslav Army.
24. The applicant states that he worked in various places in Montenegro and in Serbia.
25. The applicant is unmarried. He states that his parents are deceased. He has siblings and a child in Europe.
26. The applicant entered Australia on a Federal Republic of Yugoslavia passport. He obtained a temporary Australian visa in Country A. This visa has since been cancelled. He arrived in Australia after he visited Country A Attached to the application form is a partial photocopy of the passport, which includes a visa issued in Australia for Country B, valid for multiple entries.
27. The applicant indicates that he had 2 previous Yugoslav passports. He had used these to travel to a European country; and later various countries around the world. He visited countries en route to Australia, also made a return visit from Australia to Country C in order to comply with his Australian visa requirement.

28. The applicant sets out his refugee claims and background information in a statement attached to the application.

- The applicant states that he is a citizen of both Serbia and Montenegro.
- He gives his ethnicity as Montenegrin, and states that he has lived in both Serbia and Montenegro.
- The applicant is the one of multiple children in his family. His parents are deceased. His siblings live in Europe. The applicant's parents separated in the 1970's. His mother re-married on two further occasions. The applicant states that his father was an alcoholic. His siblings were born to different fathers, and he is not close to them. He lived with his mother until the early 1980's. He has mainly lived in Serbia since that time.
- The applicant qualified as tradesman, and did compulsory military service. He experienced conflict between different ethnic groups in the army.
- The applicant served in Croatia, and felt insecure and unsafe there. The applicant states that, as a Montenegrin, it would be impossible for him to 'relocate' to Croatia, Bosnia or Macedonia because he would face race-based persecution in any of those places.
- While during his military service, an Albanian soldier made a comment to the applicant implying that 'the Albanians will destroy or occupy our homes and we will be driven out of our own country' The applicant felt that this person had insulted his family, and he attacked the Albanian. A Serbian soldier turned on the applicant, asking him why, as a Montenegrin, he did not return to that country. The 3 fought, and the applicant was punished for assaulting the Albanian. He states that he was punished for attacking the Albanian, because they were 'especially protected' in Yugoslavia.
- The applicant claims that Albanian extremists can kill anyone in Serbia and Montenegro. The applicant is vulnerable because in Serbia he is a member of the Montenegrin community in Serbia, and because in Montenegro, Albanians – particularly organised gangs – control the country.
- The applicant claims that he found it difficult to find work after school, and had many jobs. The economy was poor, and corruption and nepotism determined who got jobs.
- The applicant was in a de facto relationship for over a year. He has a child from the relationship, but is not close to the child.
- The applicant worked with an overseas company as a tradesman, but had to return home to obtain fresh travel documents after Yugoslavia changed its name.

29. The applicant's sets out his 'experiences of persecution' which are, in summary form:

- The applicant's surname indicates that he is Orthodox, although he is not in fact religious. 'If I was Orthodox, I am at risk of being killed by anyone who is not orthodox'. The applicant points to Albanians having destroyed over 30 Orthodox churches and monasteries over the past 10 years, and publicly desecrated Orthodox cemeteries in Belgrade.
- The applicant claims that the government knows about these incidents, but does not acknowledge it. This is due to the power of the Albanians, and the government's wish for EU accession.
- The applicant claims to have been assaulted many times due to his imputed religion (Orthodox) and his ethnic background. He gives some examples, but states that there were many other incidents.

- In the late 1980's, the applicant was one of a number of people harmed by faulty goods from a local business. The owner was an Albanian, and no Albanians were harmed. The police never charged the owner, because he had a relative working with the police.
- The applicant participated in an anti-Milosevic demonstration. Some 30 Albanians, unmasked, attacked the demonstrators, shouting 'This is not Serbia', 'You will all die' and similar slogans. Two Serbian demonstrators died on the spot, and the applicant suffered knife wounds. The police ignored the violence.
- A group of Serbians – the applicant suspects they were football hooligans – attacked the applicant after he finished work. He suffered bruising from baseball bats and rocks, forcing him to take a number of weeks off work. His attackers returned to his place of work asking after him. The manager dismissed the applicant, as his attackers threatened to bomb the place of work if the applicant continued working there. The applicant's photograph appeared in the newspapers, and as a result of the publicity, he was unable to find work for a number of months. No employer wanted to risk anti-Montenegrin violence for employing the applicant.
- The most recent attack occurred when a number of Albanian men surrounded the applicant while he and some friends were taking a walk. They taunted, threatened and gestured to them, telling them that they are now in a minority. The Albanians targeted the applicant and his friends because they were talking the Montenegrin dialect of Serbian.
- The applicant and his friends did not report the incident to the police, because Montenegro is a police state and Albanians form an important constituency. The police do not act against the Albanians. The applicant states that 'the country is now owned by Albanians, they hold most of the capital there. [...] The Albanians are generally very wealthy and powerful.'

- The applicant states that there are many such attacks in Serbia, but the police are controlled by a few people and work only to their orders. The police also break the law and kill, but these things will never come to light.
- The applicant cites the serious assault of a friend of his at an event in Serbia. Although official reports concluded that it was an accident, the applicant's friend believes that the police beat him because they saw from his ID card that he was Montenegrin. The police killed another Montenegrin friend during anti-Milosevic demonstrations.
- The applicant states that his relatives had been close associates of Tito, and were public figures. A particular relative had dealings with a current political leader. Another relative was an active officer in the armed forces. Both appeared in newspapers and on television with Tito often, and were well-known Tito supporters, throughout Yugoslavia. The applicant did not become an active member of the armed forces, and was regarded as the black sheep of the family.
- The applicant states that other Montenegrins have spoken to him in a threatening manner, saying that they know who his relatives were, and that his family has now lost power.
- The applicant states that he moved to Montenegro to live, but worked in both Serbia and Montenegro. He moved back to Montenegro in response to growing nationalism in Serbia during this period, after Montenegrin independence.

30. The applicant gives details of his departure from Serbia and Montenegro, and his travel to Australia.

- The applicant started a relationship with an Australian woman. The couple agreed that he would obtain a temporary visa, to escape danger and also to visit his partner.
  - He obtained a passport and applied for visa, but was refused because he did not provide the necessary documents.
  - The applicant travelled to Country A, where he met up with his Australian partner and had a holiday. His partner sponsored visa application was lodged in Country A and this was granted. The applicant arrived in Australia and stayed with his partner
  - The relationship broke down. The applicant then travelled within Australia and worked as his money had run out. The applicant left Australia as his visa period had expired. He returned from Country C a number of days later.
31. The applicant summarises that he fears returning to either Serbia or Montenegro, due to: (a) Albanians who attack non-Albanians, and (b) other persons who believe that the applicant is Orthodox or religious. He states that the police will not investigate and prosecute Albanians or others who seek to harm him.

### *Department interview*

32. The applicant attended a Department interview. A copy of the audio recording is on file, and the Tribunal has listened to this.
33. During the interview, the applicant gave the following information relevant to his claims against Montenegro.
- He came to Australia to join his then fiancée and also to flee persecution.
  - He has Montenegrin citizenship. He has applied for, but not yet obtained, Serbian citizenship.
  - He fears persecution for political reasons – as a person who has lived in Serbia and who will be considered a ‘traitor’ in Montenegro; as a person without any political affiliation; and as a person who is marked as a Communist because of his relatives' association with Tito. He also fears persecution for religious reasons, because he is an atheist who will be under pressure to adhere to a religion. The applicant has faced discrimination as a businessman in Montenegro, forced to accept lower prices because of his past residency in Serbia.
  - The applicant stressed that the political situation in Montenegro and in Serbia is volatile, that rage is growing and that everyone knows each others’ business. There is constant danger in both countries.
  - The applicant’s mother is in Europe, some relatives are in Serbia, and others are in Montenegro.

### *Delegate’s decision*

34. The delegate was not satisfied that the applicant had a well-founded fear of Convention-related persecution in Montenegro. She did not accept that Montenegrins in general were at risk of persecution for not holding a political opinion or religious belief, or that the applicant’s profile or background established a real chance of such harm. She did not accept that the applicant was at risk of persecution from ethnic Albanians, given their status as a minority under pressure, and found no independent evidence to support the applicant’s claim that he would be targeted as a long-term resident of Serbia.

35. The delegate noted the applicant's claims to have been attacked in various incidents (in Serbia and Montenegro), but did not accept that any such incidents were Convention-related and/or that the authorities in Montenegro would be unable or unwilling to protect the applicant. The delegate did not accept that any employment problems in Montenegro were Convention-related.

### **Review application**

36. The review application contains no new claims or information.
37. The Tribunal received notification that the previous migration agent was no longer representing the applicant in this matter. The Tribunal received advice that the applicant had appointed his current representative and authorised recipient.
38. Attached to a submission were several facsimile messages, in Serbian with English translations, as follows:
- An e-mail message from the applicant to a friend. A follow-up e-mail indicates that the applicant did not receive a response.
    - The applicant writes in the first e-mail seeking written confirmation, for the purpose of his visa application, 'about that night during the demonstrations when we and the Shiptars [the translator describes this as a derogatory term, though the applicant later clarified that it is not] were slaughtering each other in [place]'.
    - Five paragraphs follow. They begin 'I want to confirm the story of [name] that I was one of many people who took part in the public demonstration on the streets of [place] in [month of year].' There is a description of the alleged incident, including that the (purported) author and the applicant narrowly escaped and that the police did not react. The text concludes with the friend's name, address and passport number. The body of the text appears to be for the friend to cut and paste into an e-mailed response.
  - E-mail correspondence between the applicant and another friend. The applicant requests information, 'something about when those Shiptars scared us', and the friend replied with an e-mail starting 'Dear Sir' in which he describes the applicant, himself and his girlfriend having been attacked by Albanians. The language mirrors that in the applicant's protection visa application. It includes the friend's address and telephone number.
  - An e-mail from a third friend addressed to the applicant's former migration adviser, advising that he met the applicant while he was working in Serbia. This person claims to have seen the applicant experience discrimination as a Montenegrin, with people trying to force him to leave his job. The witness claims to have seen football fans beat up the applicant because he was a Montenegrin. He then lost his job, and had to leave Serbia because his prospects were so poor.
39. The Tribunal received a pre-hearing submission which includes a summary of the applicant's claims, printouts (in Serbian only) from the applicant's e-mail accounts and several newspapers, and a colour photograph of the applicant with cuts and bruising.

### ***Tribunal hearing***

40. The applicant attended a Tribunal hearing. An accredited interpreter in Serbian/English was present, but the applicant is fluent in and gave most of his evidence in English. The applicant's representative did not attend.



41. The applicant confirmed that he has a Federal Republic of Yugoslavia passport, which records his place of birth. He is a Montenegrin citizen. The applicant said that he had applied for Serbian citizenship, mainly because his estranged child was born and lives there, and he does not want to jeopardise any future contact. The application is still ongoing. The Tribunal advised that the applicant therefore appeared to have only Montenegrin citizenship, and, if this were correct, its task would be to assess his refugee claims against that country.
42. The applicant said that he feared persecution in Montenegro – essentially, Montenegrins would reject him for various political reasons, actual and imputed, and Albanians would target him as a Montenegrin (for reasons of race and also religion).
  - (1) Montenegrins would reject him because of his past residency in Serbia and application for that citizenship. He referred to his new claim that unknown men attacked him.
  - (2) He was at risk of being drawn into political disputes. Although not a member of any political party, the applicant has political opinions – in favour of Kosovan independence and Karadzic’s arrest – that could lead to his being targeted for political reasons.
  - (3) The applicant’s family connections – his relatives’ association with Tito and his links to a political leader – also put him at risk of being targeted for reason of an imputed political opinion. Throughout, the applicant stressed that Montenegrin politics was volatile, the country was small, and a person could therefore be at risk of involvement in violent political fights.
  - (4) Albanians living in Montenegro would attack him on racial grounds, whenever the opportunity arose.
  - (5) Albanians, Muslim or Catholic, would also attack him on religious grounds, because his family name is clearly linked with Orthodox practice, even though he is secular. (The applicant said that his advisers had discouraged him from pursuing this claim, as it was not strong. In response to the Tribunal’s questions, the applicant explained that this concern related to the Albanians’ motives against him as a Montenegrin, and was therefore closely related to the preceding grounds.)
43. The applicant said that he was born in Montenegro and went with his mother to Serbia after her marriage broke down. He returned to Montenegro some years later. The applicant last returned to Montenegro several months ago. He was based in a particular town, as a sole trader. He travelled to Serbia every couple of weeks, staying in a friend’s apartment, where he did some work and picked up supplies. Responding to the Tribunal’s question about the address on his passport, the applicant said that he had used an old address. It was not uncommon for people to use such an official address, but to avoid official registration for taxation and similar reasons.
44. The applicant said that his child and his child’s mother live in Serbia. He last saw his child several years ago, and he has no contact with them. He knows about their whereabouts and welfare through mutual friends.
45. The Tribunal sought clarification about the applicant’s employment and other details, as presented in his first (unsuccessful) visa application, and his second application in Country A. The applicant said that he had written on his first application that he was unemployed,

because he was not registered for work. On the second application, a friend provided false documents that he was working in a particular sector. The applicant said that he had provided genuine credit and debit cards. He said that the bank had issued these cards without checking his residency or his credit.

*Fears that Montenegrins will target him for political reasons*

46. Regarding grounds (1), (2) and (3) above, the applicant relied on the articles from *Vesti*, to argue that there is tremendous tension and volatility in Montenegro, and it was easy for a political dispute to flare up. He had a political opinion in favour of Kosovan independence and the arrest of Karadzic. His relatives were linked with Tito, and he explained that he was related through marriage to a prominent politician. He was at particular risk as a person who was returning to Montenegro from Serbia, given the current level of tension between the 2 countries. The applicant referred in particular to the violent protests between pro-Serbian protestors and the Montenegrin police.
47. The applicant spoke of the alleged incident when a friend witnessed the applicant after some Montenegrins had come to learn that he had lived in Serbia for several years. They asked where he had worked, and they attacked him. The Tribunal asked the applicant why he had not referred to this incident in his earlier statements. The applicant explained that he did not have a witness statement to support this, and did not realise that his friend had also taken a photograph, presumably with her telephone camera. The Tribunal expressed scepticism that such lack of evidence would prevent a person presenting a relevant claim. The applicant also indicated that his first adviser had taken down his refugee claims, but at a certain point had told him that she had enough material and did not need any more.
48. The applicant said that his friend had not given details of this incident in her first e-mail to him, but he now appreciated her courage in helping him. He said that she had come to the scene after he had been bashed, while he was crying and his blood still flowing. She ran to the police, but they were not interested in helping stop the fight, or in doing any follow-up. The applicant said that the police were indifferent, particularly when it came to the acts of their own nationals.
49. The Tribunal put to the applicant that his political views, including his criticism of Serbian claims to Kosovo and his support for Karadzic's arrests, seemed to be mainstream positions shared by the current government. It had found no information to suggest that the descendants of Tito associates, or family members of prominent politicians, were being targeted merely for such an association. Country information indicated that Serbia was the largest source of foreign workers for Montenegro, so it was difficult to imagine that the mere fact of having lived in Serbia would lead to targeting on political or other grounds.
50. The applicant stressed that Montenegro was a small country, and disagreed that it was a 'remote' possibility that a difference of political opinion could flare up into something more serious. On this and other issues, he emphasised that the Montenegrin authorities were eyeing EU membership, and were therefore at pains to conceal the real risks. The Tribunal noted that the issue of future EU membership, alongside interest from other human rights bodies and governments such as the US, invited scrutiny of the country's human rights record. Indeed, they had identified problem areas such as the treatment of Roma. It was therefore surprising, if Montenegrins were being persecuted for political reasons or for reason of having returned from Serbia, this was not covered. The applicant suggested that the treatment of its own

people was a particularly sensitive issue for the government, and good reason for it to conceal the truth.

51. The Tribunal noted that *Vesti* was a Serbian-language newspaper in Australia, and might therefore present information that was critical of Montenegro and its political situation generally. The Tribunal observed that there had been more widespread reporting of recent political clashes, indicating clashes between pro-Serbian opposition activists, angered by Montenegro's support for Kosovo's independence, and the police. This had involved some political activists, but there was no suggestion that the applicant was a person who was involved in any such activities. The applicant explained that the situation was volatile, and there were many political clashes that were not reported.
52. The applicant also spoke to his claims to be at further political risk because of his family connections, through his relatives' links with Tito, and through his claimed relationship with the politician. He explained that he was a kind of relative, in 'some weird way', to the politician, because they share common ancestry through the applicant's relative. This politician's policy positions put the applicant at particular risk. The Tribunal said that it had not found any suggestion that family links of these kind – with former Tito associates or through distant links with politicians – put people at risk of persecution, as members of any particular social group or for reason of any imputed political opinion. The applicant explained that there were many incidents that were not reported.

#### *Fears from Albanians*

53. The Tribunal put to the applicant that, according to independent reports, Albanians amounted to a small percentage of the Montenegrin population, some 30,000 people or around 5 per cent. The applicant said that this was completely wrong. Their numbers were much larger. He suggested that the Montenegrin authorities did not know the exact number. They colluded in spreading under-inflated numbers. The applicant said that the Albanians were seeking more land. They already controlled Ulcinj, one locality, and they had established 3 bases in strategic positions around the capital Podgorica.
54. The Tribunal noted that this picture was at odds with independent reports. It was difficult to imagine why Montenegrin citizens would conceal any threats from such a minority, let alone how they could actually conceal such information.
55. The Tribunal discussed in some detail the alleged attack, supported by the witness's statement. The applicant said that a number of Albanians confronted him, while he was walking. They could hear that he was Montenegrin from his accent and were, in his opinion, also motivated by religion. It was a vulgar display of their power and their ambitions.
56. The Tribunal said that it had concerns about the e-mail exchange between the applicant and his friend, which could influence the weight and meaning that it attached to all such evidence. It noted that the applicant's e-mail to his friend included not just a request for his help, but also, in the following paragraph, the complete text of a statement written about the applicant, in the third person. There was no preceding e-mail. This suggested that the applicant was preparing text for the friend to cut and paste, and may raise questions as to the reliability of any such e-mailed texts as independent evidence as to what happened. The applicant said that this impression arose because the friend, in his e-mailed reply to the applicant, had included the applicant's response and had inserted his own text in the wrong place (thus giving the impression that the applicant had written it in his original message). With the Tribunal's

agreement, the applicant logged on to his e-mail account and tried to locate the relevant e-mails to show that his original message did not include any such text. He found some e-mails, but was unable to identify his first e-mail to his friend. The Tribunal agreed to receive any further submissions on this point at a later stage. It alerted the applicant to its ongoing concerns about the authenticity of the e-mail texts, and whether, in any event, they showed that the applicant had been subject to Convention-related target (in other words, harmed for reasons that are now relevant to his refugee claims).

57. The Tribunal observed that it sensed from the applicant's oral and documentary evidence that he was antagonistic towards Albanians. He replied that he is not a xenophobe or nationalist, but had become genuinely afraid of the Albanians because of how they treat Montenegrins. He referred to instances of murder and the burning of churches. He clarified that the term 'Shiptar', which he had used in the e-mails submitted to the Department and the Tribunal, was not derogatory, as noted by the translator. He (and later the interpreter) gave the Tribunal background on the origin of this word. The applicant suggested that the translator's readiness to interpret the word in this manner was, of itself, symptomatic of the difficulties Montenegrins face in their dealings with Albanians.

*The applicant's travel and past conduct*

58. The Tribunal discussed with the applicant his claim to have always wanted to 'escape' Yugoslavia. It noted that he may well have wished to emigrate, but the issue was whether his conduct was consistent with his claimed fear of persecution in Montenegro. Regarding his travel to another country in Europe, the applicant said that his relatives were living there at that time. He was young at the time, and a relative had arranged his papers for him to work there. The locals had negative attitudes towards people from the Balkans. The applicant did not apply for refugee status, as he believed there was 'no possibility'. He did not want to stay there illegally, so he returned to Yugoslavia. The Tribunal asked whether the applicant had made any formal enquiries in that country or any other EU country, all of which were signatories to the Refugees Convention. The applicant said that a relative had been able to stay, as a dependant, but another relative had told him there was no scope for him. He had heard from various sources that any application would be refused, because of where he came from. The applicant intimated that he accepted this advice.
59. Regarding his overseas travel, the applicant said that he had an opportunity to buy a house in one country, and stay there. However, he missed his child, and felt that migration would have been an act of cowardice. The Tribunal queried this claim, as the applicant had earlier said that he did not have a relationship or contact with his child. The applicant described the background to the child's birth, essentially as a donor. His friends had always considered the applicant as someone who would move overseas at some point. However, the applicant had developed emotions for his child, and wanted to stay close to him.
60. The applicant advised that he met and fell in love with an Australian citizen, just after moving back to Montenegro. The applicant said that they discussed his wish to emigrate, including his wish to leave Montenegro because of his fear of persecution, particularly from the Albanians. He believed that their e-mails, which were private in nature, might include some references to this. Responding to the applicant's question as to whether the Tribunal needed these, the Tribunal explained that it would be his choice as to what material he submitted to support his claims.

61. The applicant said that he travelled to Serbia to collect his passport. The Tribunal put to the applicant that he appears to have remained in Serbia and in Montenegro from this time up to his departure for Country A and Australia some months later. There was no evidence that he explored the possibility of staying in any other country, for instance, an EU country, in the meantime. This could cast doubt on his current claim that it is now unsafe to return to Montenegro or Serbia. The applicant explained that he did not have money to leave earlier. He told the Tribunal that it was his fiancée who paid for his travel. Although she knew about the applicant's need for protection, she suggested instead that he enter Australia on a temporary visa and they then apply for a spouse visa. The applicant now realises that she was 'testing' him, and that he had been foolish to rely on this advice. Later, the applicant gave another reason for his delay in leaving Montenegro and Serbia: Citizens of these countries needed visas, which always involved delays. In other words, he was strongly motivated to await an Australian visa and, as a matter of practicality, his options were limited because most countries required visaed entry.
62. Regarding his delayed protection visa application in Australia, the applicant explained that his relationship broke down shortly after his stay. He waited on in the hope that it might be retrieved. He spoke with a migration agent who was unable to help him with a protection visa application because he did not have the money to pay her. He did not tell anyone else about his fears of persecution in Montenegro or in Serbia. The applicant said that he approached the Department during his visit, to inform them that he was going to leave Australia and re-enter, and that he intended to comply with his visa conditions. The applicant said that he had only worked for a few days during his visit, so that he could pay for his trip to Country C and then re-enter Australia.
63. The applicant stressed his past interest in seeking a legitimate means of staying in Australia. He said that he felt uncomfortable at having to beg for a protection visa, and had therefore regarded this as a last resort.

*Adverse information*

64. At the end of the hearing, the Tribunal put to the applicant orally the particulars of information that it considered would be the reason, or part of the reason, for affirming the delegate's decision. It confirmed that the applicant understood this information, which variously related to (a) the credibility of his claims, and (b) the well-foundedness of any fears that he might have, and the consequences of the information. The Tribunal invited the applicant to comment or respond to the information, alerting him that he may also seek additional time to do so. The applicant requested additional time to comment/respond, indicating that he wished to do so in writing. The Tribunal agreed to receive any further submissions within 14 days. The applicant made some initial comments/responses as the Tribunal went through the information, and the Tribunal has incorporated these into its summary of evidence.

*Post-hearing correspondence*

65. The Tribunal wrote to the applicant and his representative following the hearing, confirming the topics that had been discussed at the hearing, and the arrangements for any comments/responses that he may have. It attached to this letter further details of relevant country information.

66. The Tribunal wrote a separate letter on the same day, pursuant to s.424A of the Act, inviting the applicant's comments or responses to country information relating to particular individuals.
67. The applicant submitted his comments and responses (in reply to the Tribunal's 2 letters), and further information. The Tribunal's summary of these follows.
68. On the treatment of Montenegrins formerly resident in Serbia: -
- The applicant refers to 'a hidden animosity which is only apparent to those who actually live in Montenegro'.
  - The applicant states that private internet sites reveal the true situation. He provides a printout of an internet search (Google) for the words 'Montenegrins' 'against' and 'Serbian', indicating some 487,000 results. [The unsorted first page of the results includes references to Montenegrins with Serbian allegiances, particularly through the Serbian Orthodox Church' and tensions over Montenegro's support for Kosovo independence.
  - The applicant notes country information about Montenegro's recent decision to recognise Kosovo's independence including reference to Serbia's 'threatened retaliation against the Montenegrins living in Serbia' He concludes that he has a well-founded fear of persecution as a result of 'tension on both sides'. The applicant states that the recent violence in Montenegro is the manifestation of long-simmering tensions.
69. On country information concerning Albanians in Montenegro: -
- The applicant restates that the actual number of Albanians in Montenegro is not 31,000, but rather 60,000. He refers to a Wikipedia extract which lists almost 25,000 people as 'ethnic Muslims', a euphemism for Albanians, in addition to the official number of 31,000.
  - The applicant also rejects the suggestion that the Albanians are 'an oppressed minority', referring to their calls in the Montenegrin parliament for independence.
    - The applicant attaches an unsourced pro-Serbian article, based on an article by a Montenegrin Serb leader. The text, which uses inflammatory language, criticises Albanian terrorism and separatist ambitions in Montenegro, and also US politicians who are 'on the Albanian narco-terror gravy train'.
70. On the risk of persecution on the basis of political opinion: -
- The applicant states that he fears persecution because he holds a moderate political viewpoint. He refers to 'a great deal of current tension because of the power of extremists such as the Serbian nationalists', and states that a person opposed to such views is therefore at risk of harm.
71. On his previous travel overseas: -
- The applicant states that his mother tried to apply for refugee status in a European country, but the authorities told her that he would not be accepted. The applicant returned from overseas because of the conflict, and his fears for his child.
  - The applicant adds that he arrived in a foreign country through work, but the authorities arrested and detained him overnight 'only because [he] held a Serbian passport'. The applicant secured his release only after showing documents from other governments showing that he worked for a European company. This led the applicant to conclude that 'a holder of a Serbian passport would never be accepted anywhere.'

72. On his delayed departure from Montenegro and Serbia: -
- The applicant states that he and his fiancée started planning his departure even before he had his passport. At the time, she told him that he would ‘never succeed in obtaining refugee status’. The applicant attaches e-mail exchanges that he claims show that, even at this time, he was afraid of returning to his home country, and working constantly together with his fiancée to find a way out of Serbia/Montenegro.
    - Attached e-mails contain the couple’s private exchanges. They show that they started discussing the applicant’s departure months before applying for a passport. The fiancée recommends that the applicant apply for a temporary visa, and conceal the fact of their relationship. She notes that spouse visas take too long to process.
    - In later e-mails, the fiancée suggests that the applicant move closer to Australia, such as Country A, so that they can meet up more easily, and that the applicant may need to apply for a visa to that country.
  - The applicant states that he kept a low profile throughout this period, although he was attacked in a few times.
73. On the e-mailed support statements, including the impression that the applicant scripted these: -
- The applicant explains that his friend’s e-mail failed to separate out: (a) the applicant’s original text to him, from (b) his friend’s own words. The applicant states that he asked his friend to describe the clash, but that he did not script the statement, as to do so would jeopardise his own credibility.
  - The applicant attaches further copies of these e-mails, in Serbian with English translations. The first e-mail, chronologically, is from the applicant to his friend, containing the request and the text beginning ‘I want to confirm the story of [...].’
74. On the lack of evidence that family connections with General Tito may establish a well-founded fear of persecution: -
- The applicant contends that that country information indicating that some people in Montenegro hold ‘strong negative views towards Tito, the communist security services and their collaborators’ confirms his claim that he is at risk of harm as a descendant of former Tito associates. He goes on to state: ‘My [relatives] were proud communists and creators of Old Yugoslavia so I cannot avoid this association. Nor do I wish to avoid this association as I am proud of what they did.’
  - He states that he believes that there are photographs of both relatives with Tito.
75. On the lack of evidence that remote relatives of a prominent politician have a well-founded fear of persecution: -
- The applicant claims that internet articles show that the politician and his supporters are in a minority, and that the Serbian nationalists violently oppose them. He refers to a tribe mentality in Montenegro, in which a person is considered to have the same attributes as his ancestors.
  - A friend has told the applicant that another war will occur, so it is more dangerous than ever in Montenegro.

### *Further correspondence*

76. The Tribunal received copies of screenshots from the applicant's e-mail account, showing a record of the exchanges between him and the people who had submitted statements on his behalf. (The Tribunal understands the applicant to have been trying to dispel its concern, discussed at the hearing (paragraph 57), that he may have scripted some or all of the e-mails that he had submitted to support his claims.)
77. The Tribunal received the translation of the witness's e-mail. It contains the following information:
- The witness writes 'to corroborate [the applicant's] statement that during last year he had problems based on nationalism'. She writes that she met the applicant when he was working where she lived. She had some work done, and recommended the applicant to another resident.
  - The witness called on the workplace at a time when she knew the applicant would be with the new client. She found the job half-done, and a dispute underway between the applicant and the new client. The client threatened the applicant and said that a friend would be arriving soon.
  - The client insulted the applicant, that 'in Montenegro he is to do as he is told and as much as he is told, so when he returns to his dear Serbia he can do as he pleases' Other racist slurs followed, including 'the [expletive] Serbian [expletives] will not dictate in Montenegro'
  - The witness tried phoning the police, without success. She caught a taxi to the police station, only to be told: 'leave them alone for a while, they'll be quieter later'. On returning to the studio, she found the new client and his friend bashing the applicant. The client stated that the applicant is not safe anywhere, that he would find him even in Serbia.'
  - The police failed to follow up at all. When a neighbour enquired, the police responded that they 'do not have the time to investigate fights'.
  - The witness refers to the photograph that she took of the fight.
78. Also attached is an e-mail from the applicant in which he asks for her corroboration of what happened, when a number of men beat him up. He notes that the Department had refused his application because his claims about Montenegro 'could not be verified'.
79. The submission includes a number of press articles, in Serbian with English translations. These refer to political unrest in Serbia following the arrest of Radovan Karadzic on war crimes charges. An article in *Vesti* dated 4 August 2008, refers to a dispute between 2 residents of Podgorica, when one killed the other for reportedly saying that Karadzic 'should have been arrested a long time ago.'
80. The Tribunal received an e-mail in which the applicant complains about his migration agent's lack of communication with him. The e-mail also contains information about the applicant's efforts to secure Australian citizenship, most of which is not relevant to this decision. He gives examples of his having acted in good faith, and further information about his contacts with a migration agent, the person whom he claims was unable to help him seek protection because of his lack of funds. He mentions the migration agent's having allowed him to use her business address to open a bank account; her assistance to him in gaining a visa to Country B; and his involvement with her in other matters



## *Second Tribunal Hearing*

81. The applicant attended a second Tribunal hearing. The Tribunal had received advice from DFAT in a separate matter concerning the citizenship status and rights of a person of Montenegrin origin who had lived in Serbia (see paragraph 90 below).
82. The Tribunal explained that it wished to alert the applicant to this information. Taken at face value, it could raise questions as to whether the applicant, as a holder of a FRY passport that recorded his place of residence as Serbia, might – even if he were permitted to enter and reside in Montenegro – face difficulties in seeking to be recognised as a citizen. The Tribunal advised that, although highly unlikely, it may need to consider the possibility that the applicant is stateless. Even if this were the case, Australia would only have protection obligations towards the applicant in certain circumstances.
83. The applicant appeared surprised at the suggestion that he may be stateless. In response to the Tribunal's questions, the applicant gave the following information:
  - The applicant, responding to the Tribunal's advice that DFAT had obtained information from a Serbian official and had received no reply from Montenegrin officials, said that it was not surprising that a Serbian official had given an unflattering view of Montenegrin practice.
  - He confirmed that his FRY passport had been issued in Serbia, where he had been registered with the local authorities, although he was in Montenegro at the time.
  - He explained that he had been registered there, initially through his mother. At the same time, his father had also kept him registered at his address in Montenegro, with the aim of avoiding any future complications with inheritance. The applicant said that, even when they were part of one country, the authorities of Serbia and Montenegro did not confer with each other. Responding to the Tribunal's questions, he said that in fact registration occurred at the municipal level, based on evidence of the person's local residence, such as an address.
  - The applicant said that he travelled to and from Serbia and Montenegro by bus or train, and had at most only needed to present his national ID card, not a passport. There was a lot of traffic between the 2 countries, and there were no checks.
  - The applicant said that he had heard from friends border crossings were now very different, given tensions between the 2 countries. They had told him that Serbians travelling to the Montenegrin seaside had experienced extra checks, unpleasant interrogations and luggage searches. Some friends had missed a bus connection as a result of these connections. The applicant did not know if Montenegrins experienced this – to his knowledge, few if any were now travelling to Serbia.
  - The Tribunal noted its impression that Montenegrin authorities were still in the process of establishing procedures, and that officials in both Montenegro and Serbia were pragmatic in their administration of registration and other formalities. The applicant said that Montenegro was now beginning to tighten up and adopt EU regulations – EU officials and observers were present in the country.
  - The Tribunal drew to the applicant's attention the further comment in DFAT's advice that they were not aware of Serbian-based returnees experiencing problems in Montenegro, although they had not ruled out 'isolated incidents'. It noted, however, in the light of the applicant's comment that EU officials had established a presence in Montenegro, that it was surprising if such mistreatment of returnees were to go unreported.

- The applicant said that he had presented all his claims and evidence to the Tribunal. He again emphasised that he had been open about all his experiences in Australia, including his problems with his ex-fiancée and his dealings with the Department (such as his attempts to keep officials informed of his location and immigration status).

### ***Further submission***

84. The applicant sent a further submission. He states that, despite his strong family and personal ties to the former Yugoslavia and its republics, he rejects the idea of returning there. He states that his father died after finding out that NATO would attack Serbia and Montenegro in 1999, and this mother moved to another country, and died there.
85. The applicant states that many people have fled the former Yugoslavia and that, if granted Australian residency, will sever all links with Montenegro and Serbia. He writes that – in addition to his fears of persecution from the Albanians and as a politically ‘unfit’ person – he has no feelings at all for that part of the world.

### **Independent Information**

86. The Tribunal has had regard to a range of country information, including that in the delegate’s decision, the applicant’s submissions and other sources. The Tribunal sets out key information below.

#### *Montenegrin Citizenship*

87. According to the UNHCR Refworld website the Montenegro citizenship law may be cited as *Law on Montenegrin Citizenship*. The law was published on 21 February 2008. It was enacted on 14 February 2008 by the Assembly of Montenegro on the second extraordinary session in 2008, and promulgated by the President on 21 February 2008. The law was published in Official Gazette no. 13/2008 (‘Law on Montenegrin Citizenship [Montenegro]’ (undated), UNHCR Refworld website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=category&docid=47e117082&skip=&category=LEGAL&coi=MNE>).
88. An unofficial UNHCR translation of Montenegro citizenship law is found at: Government of the Republic of Montenegro 2008, *Law on Montenegrin Citizenship* [Montenegro], 21 February, UNHCR Refworld website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=47e117082>). It includes the following articles relating to dual citizenship and acquisition, cessation and proof of citizenship.

#### Article 2

A Montenegrin citizen who has citizenship status in another state as well, shall be considered as a Montenegrin citizen in a procedure before Montenegrin bodies, unless otherwise is provided by international treaties (Government of the Republic of Montenegro 2008, *Law on Montenegrin Citizenship* [Montenegro], 21 February, Art. 2, UNHCR Refworld website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=47e117082> – Accessed 14 May 2008).

#### Article 3

Montenegrin citizenship shall be proved by a certificate of Montenegrin citizenship, by valid travel document and by other public documents in accordance with the law (Government of the Republic of Montenegro 2008, *Law on Montenegrin Citizenship* [Montenegro], 21 February, Art. 3, UNHCR Refworld website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=47e117082> – Accessed 14 May 2008).

#### Article 4

Montenegrin citizenship shall be acquired:

- 1) by origin;
- 2) by birth on the territory of Montenegro;
- 3) by admittance;
- 4) based on international treaties and agreements (Government of the Republic of Montenegro 2008, *Law on Montenegrin Citizenship* [Montenegro], 21 February, Art. 4, UNHCR Refworld website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=47e117082> – Accessed 14 May 2008).

#### Article 19

Montenegrin citizenship shall cease through:

- 1) his or her request,
- 2) by operation of law (ex lege),
- 3) based on an international treaties and agreements (Government of the Republic of Montenegro 2008, *Law on Montenegrin Citizenship* [Montenegro], 21 February, Art. 19, UNHCR Refworld website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=47e117082> – Accessed 14 May 2008).

#### *Implementation of the Montenegrin Citizenship Law*

89. Following the first Tribunal hearing, the Tribunal received advice from the Department of Foreign Affairs and Trade in another matter involving a person of Montenegrin origin who was a long-term resident of Serbia. The Tribunal gave the applicant the full text of that advice at the second hearing, and discussed it with him. It includes the following relevant information:

A. Does a FRY passport issued in 2004, with birthplace recorded in Montenegro, satisfy the evidentiary requirements for Montenegrin citizenship? A FRY passport issued in 2004, with a birth place recorded in Montenegro does not satisfy the evidentiary requirements for Montenegrin citizenship.

B. Is such documentation sufficient for a person to enter and reside in Montenegro, and to be received as a citizen of that country; and  
A person with the above documentation could enter Montenegro, but on the basis of the document alone the person would not be considered a citizen and could experience difficulties in registering residency in Montenegro (i.e. including obtaining identification required for work or social security purposes).

C. If it is not sufficient, what else would be required? An individual born in Montenegro can apply for Montenegrin citizenship 'by birth' if when the individual was born, both parents were citizens of the Republic of Montenegro (i.e. the former Yugoslav Republic of Montenegro). A person could apply for Montenegrin citizenship on the basis of residency after they had lived in Montenegro for a prescribed period, or on the basis of a spouse's citizenship.

D. If the applicant has citizenship, do reports suggest that long-term returnees from Serbia to Montenegro face problems? No such problems have come to our attention. There may have been some isolated cases, however it does not appear to be a general problem.

## *Serbia - Citizenship*

90. According to the UNHCR Refworld website the Serbian citizenship law may be cited as the *Bill on the Citizenship of the Republic of Serbia*. The law was published on 29 December and entered into force on the on the eighth day from the day of its publication in the “Official Gazette of the Republic of Serbia” (29 December 2004), and its implementation commenced upon the expiry of 60 days from the day of its entry into force (27 February 2005) (‘Bill on the Citizenship of the Republic of Serbia’ (undated), UNHCR Refworld website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=category&docid=43de38344&skip=&category=LEGAL&type=LEGISLATION&oi=SRB> – Accessed 14 May 2008 ).
91. The Serbian citizenship law is set out in: *Bill on the Citizenship of the Republic of Serbia* 2004, UNHCR Refworld website, 29 December <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=43de38344> –Accessed 14 May 2008).
92. It includes the following article relating to the acquisition of citizenship:

### Article 6

The citizenship of the Republic of Serbia shall be acquired:

- 1) by origin;
- 2) by birth on the territory of the Republic of Serbia;
- 3) by acceptance;
- 4) under international treaties.

## *Implementation of the Serbian Citizenship Law*

93. The Tribunal found numerous references to support the applicant’s position that he is eligible to acquire Serbian citizenship in the future, on the basis of long-term residency and/or family ties. There are ongoing negotiations between the two countries to address the question of dual citizenship. This supports the applicant’s claim that his application for Serbian citizenship (as his second citizenship) is unresolved.
94. The Tribunal handed to the applicant DFAT advice that included the following comment on the position of a Montenegrin who is a long-term resident of Serbia:

*A. Does a Montenegrin who has lived on the territory of (present-day) Serbia for more than 10 years, who has a recent Federal Republic of Yugoslavia passport recording the place of residence as a place in Serbia, and who has now been outside that country for more than 5 years, have:*

*(i) Serbian citizenship, or –*

A FRY passport issued in 2004, with a birth place recorded in Montenegro and the place of residence recorded as in Serbia, does not satisfy the evidentiary requirements for citizenship of Serbia.

*(ii) a right to apply for Serbian citizenship.*

An individual born in Montenegro who has lived on the territory of (present day) Serbia for more than 10 years and who has a recent Federal Republic of Yugoslavia passport recording the place of residence as a place in Serbia may apply for Serbian citizenship on the basis of

residency, assuming that the individual did not formally notify the competent authorities of their departure from Serbia.

*B. Is such a person entitled to enter and reside in Serbia (on the basis of past residency, the location of family members, etc)?*

A holder of a FRY passport is entitled to enter and reside in Serbia on the basis of past residency and the location of family members.

(Department of Foreign Affairs and Trade 2008, DFAT Report No.935 – Montenegro: RRT Information Request: MNE34042, 5 December)

### *The Albanian population - Montenegro*

95. Census data compiled in 2003 by the Statistical Office of the Republic of Montenegro (Monstat) gives the following for the Albanian population in Montenegro:

Albanian population (% of Total)

Montenegro: 31,163 (5.03%)

(Source: Statistical Office Republic of Montenegro 2004, 'Census of Population, Households and Dwellings 2003: Population – National or Ethnic Affiliation Data by settlements and municipalities' Statistical Office of the Republic of Montenegro – Monstat website, pp. 12,14,16,18 September <http://www.monstat.cg.yu/Popis.htm> – Accessed 24 October 2008).

*Reported violence by Albanians – racial or criminal (including with Russian links); Police or official responses to any known attacks*

96. The Tribunal has found no reports describing racial or criminal attacks by Albanians against others in the applicant's area, or Albanian involvement with Russian gangs more generally.
97. The Tribunal found several reports on crime gangs/organised crime in Montenegro but these do not refer to the involvement of the Albanian population ('Montenegro police arrest organized-crime boss', 2008, *The Montenegro Times*, 8 September, p. 2 [www.themontenegrotimes.com/download.php?filename=Common/Documents/Edition/TMT\\_40-final.pdf](http://www.themontenegrotimes.com/download.php?filename=Common/Documents/Edition/TMT_40-final.pdf) – Accessed 29 October 2008; 'Serbian daily reports on crime rate rise in area near Montenegrin border' 2007, *BBC Monitoring European*, source: *Blic*, 2 June).
98. Human Rights reports and news articles on the Albanian population in Montenegro focus on their minority status in the country and issues such as electoral representation, employment and minority rights (Council of Europe: Commissioner for Human Rights 2008, *Report by the Commissioner for Human Rights, Mr Thomas Hammarberg, on his visit to Montenegro, 2 – 6 June 2008*, 8 October, United Nations High Commissioner for Human Rights website, pp.19-20 <http://www.unhcr.org/refworld/docid/48ecd3192.html> – Accessed 29 October 2008; Adrociv, S. 2007, 'Montenegro rebuffs Albanian demands', Balkan Investigative Reporting Network (BIRN) website, 15 June <http://www.birn.eu.com/en/87/10/3314> – Accessed 29 October 2008; Komnevic, P. 2006, 'Arrest of "Terrorists" sows discord in Montenegro', Balkan Investigative Reporting Network (BIRN) website, source: *Balkan Insight*, 16 November <http://www.birn.eu.com/en/59/10/1647> – Accessed 29 October 2008;

Camovic, M. & Adzovic, I. 2006, 'Albanians finish last in race for jobs', SerbBlogSpot, source: *Balkan Insight*, 10 April <http://serbblog.blogspot.com/2006/04/albanians-finish-last-in-race-for-jobs.html> – Accessed 29 October 2008).

99. As discussed at the Tribunal hearing, pro-Serb and Albanian political parties in Montenegro opposed each other on the issue of Montenegro's recent decision to recognise Kosovo's independence, a decision which sparked protest and riots in October 2008 from pro-Serb activists. Reports consulted on these recent events did not refer to any attacks between the two ethnic groups ("Big demos" if Montenegro recognises Kosovo' 2008, *Balkan Insight* website, 21 July <http://www.balkaninsight.com/en/main/news/11937/> – Accessed 29 October 2008; 'Montenegro's Albanians urge government to recognize Kosovo' 2008, *BBC Monitoring European*, source: *Gazeta Shqiptare*, 15 September; Milic, P. 2008, 'Opposition says Montenegro police incited violence in rally against Kosovo recognition', *Associated Press Newswires*, 15 October).

*Former Tito associates and their family members in Montenegro*

100. The Tribunal has found no references on the current situation faced by former Tito associates or their family members living in Montenegro.
101. The Tribunal found newspaper articles reporting on the death in Belgrade in 2003 of a one-time close associate of Tito, as well as information on the grandchildren of Tito living in Croatia, Bosnia, and Belgrade. Other articles also refer to persons expressing nostalgia for the former Yugoslavia under Tito (including through the building of a "Yugoland" theme park) and participating in commemorations of his death. None of these articles suggest that these persons or those associated with Tito currently face hostility in Montenegro or other parts of the former Yugoslavia ('Tito admirers gather in Kumrovec to celebrate his legacy' 2008, *BBC Monitoring European*, source: *HINA news agency*, Zagreb, 25 May; 'Bringing back Tito' 2008, *The Independent*, 1 March <http://www.independent.co.uk/news/world/europe/bringing-back-tito-790002.html> – Accessed 24 October 2008'; 'Serbia requests warrant for Tito's grandson' 2008, *AOL News New Zealand* website, source: *The Associated Press*, 22 October <http://www.aol.co.nz/news/story/Serbia-requests-warrant-for-Titos-grandson/1169951/index.html> – Accessed 24 October 2008; 'Tito's granddaughter sees ex-Yugo countries joining Europe without borders', 2003, *Agence France-Presse*, 7 February; 'Former top Yugoslav Communist Party official dies at 89' 2003, *Associated Press Newswires*, 5 September; Gall, C. 2000 'A Tito Grandchild Battles Nationalism's Excesses', *The New York Times*, 20 July <http://query.nytimes.com/gst/fullpage.html?res=9800EED81E3BF933A15754C0A9669C8B63&sec=&spon=&pagewanted=all> – Accessed 24 October 2008 – Attachment 6; Djilas, A. 1995, 'Tito's Last Secret: How Did He Keep the Yugoslavs Together?', *Foreign Affairs*, July/August, Council on Foreign Relations website <http://www.foreignaffairs.org/19950701fareviewessay5057/aleksa-djilas/tito-s-last-secret-how-did-he-keep-the-yugoslavs-together.html> – Accessed 24 October 2008).
102. Nonetheless, reports indicate that strong negative views toward Tito, the communist security services and their collaborators are still held in some sectors of society in Montenegro. The Serbian Orthodox Church in Budva chose to include these persons in a fresco depiction of hell in 2005, stating that "the communists are Antichrists and have for decades devastated our cult places":

Josip Broz Tito, the founder of communist Yugoslavia, is certainly burning in hell according to the Serbian Orthodox Church.

Tito's portrait is among those of the sentenced to eternal damnation, imaged on a fresco in the church in Budva, Montenegro, Serbian daily Novosti said on Tuesday. The work, commissioned by the local ecclesiastical authorities to Belgrade painter Vladimir Kidisevic, also portrays Miras Dadaic, a promoter of a Montenegrin independent church.

The fresco, which covers a whole wall of the church conveys the universal judgement but also shows the judgement of the Serbian Orthodox See, regarding the fact that images of the security services of the communist era and their collaborators are painted next to Tito.

Benedict Jovanovic, prior in the Podmajne Monastery, said the intention of the fresco was to show among the damned all the people who had harmed the Serbian Orthodox patriarchate.

"The communists are Antichrists and have for decades devastated our cult places," he said ('Tito in hell for Serbian Orthodox Church', 2005, ANSA – English Media Service, 20 January).

103. [Details deleted under s.431 of the Migration Act in relation to the prominent politician]

*Persons in Montenegro who are not religious or who are not members of political parties*

104. The US State Department's current *International Religious Freedom Report* indicates that approximately 4.5% of the Montenegrin population is "agnostic, atheist, or undeclared":

The country has an area of 5,417 square miles and a population of 630,000. According to the 2003 census, more than 74 percent of the population is Orthodox, 18 percent Muslim, and 3.5 percent Roman Catholic. The remaining population is largely agnostic, atheist, or undeclared (US Department of State 2007, *International Religious Freedom Report for 2007 – Montenegro*, 14 September, Section 1: Religious Demography <http://www.state.gov/g/drl/rls/irf/2007/90850.htm> – Accessed 27 October 2008).

105. In the lead up to a vote on independence in 2002, a report on the UK-based Institute for War & Peace Reporting website stated that police banned New Year's Eve celebrations in Podgorica on account of expected clashes between the Serbian Orthodox Church and "two independent youth and artistic groups who had called for a simultaneous non-religious celebration" (Tadic, M. 2002, 'Montenegro: Church Divisions Deepen', Institute for War and Peace Reporting website, 17 January [http://www.iwpr.net/index.php?apc\\_state=hen&s=o&o=p=bcr&l=EN&s=f&o=250697](http://www.iwpr.net/index.php?apc_state=hen&s=o&o=p=bcr&l=EN&s=f&o=250697) – Accessed 27 October 2008).
106. In 2000, *BBC Monitoring European* reported on accusations from sections of the Serbian Orthodox Church that "former communists and their Titoist atheist parties" were, with the approval of government authorities, seizing churches belonging to them and handing them over to the Montenegrin Church:

The Bishopric of Montenegro-Littoral has warned that "the seizure of churches belonging to the bishopric and their handover to the so-called Montenegrin Church is being carried out by former communists and their Titoist atheist parties, with the tacit approval of the [Montenegrin] authorities, at meetings in Cetinje hotels".

"Atheist parties of a Titoist totalitarian nature have been using a handful of church delinquents, under a new pretext, and continuing to harass the church by trampling upon

elementary human and religious rights, with the tacit approval of the state institutions,” the Bishopric of Montenegro-Littoral said in its statement.

The bishopric believes that through such acts former communists, masked as new democrats, are “trampling upon God’s and human laws, bringing a curse upon themselves, the [seized] churches, the local people and future generations”.

“Who has granted such people the right to wheel and deal in churches and property of the ancient Bishopric of Montenegro-Littoral and its Christian people? Such things were possible during the 50 years of totalitarian lawlessness and they are happening again in the increasingly lawless Montenegro,” the statement said.

The bishopric warned that “in normal law-governed states all such acts are treated as violence and punished as such”.

“Unfortunately, a growing number of people in Montenegro today feel they can join Europe despite lawlessness, violence, deceit, plunder, desecration of their people’s shrines and hatred among brothers,” the statement added...

A press conference on this topic will be held in the seat of the Bishopric of Montenegro-Littoral on 16th December (‘Serbian Orthodox Church alarmed by seizures of its property’, 2000, *BBC Monitoring European – Political*, source: Bosnian Serb news agency SRNA, 12 December).

### *The treatment of long-term Serbian residents returning to Montenegro*

107. The Tribunal found limited data on the number of long-term Serbian residents returning to Montenegro, and no information as to whether they face specific difficulties in Montenegro. An October 2007 migration profile on the Republic of Montenegro by the International Organisation for Migration (IOM) gives some relevant statistics: in a survey of migrant communities/diasporas around the world, that for Serbia shows that 69 049 persons declared themselves to be Montenegrin (based on the 2002 Serbian census); and in 2005, 56% of labour migrants to Montenegro originated from Serbia (International Organisation for Migration 2007, *Republic of Montenegro - Migration Profile*, October, pp. 14 &17 <http://www.iom.hu/regpublications.html> – Accessed 29 October 2008).
108. As the Tribunal mentioned at the hearing, as a result of Montenegro’s decision to recognise Kosovo’s independence, nationalist legislators in Serbia urged Serbians not to travel to Montenegro and “threatened retaliation against the Montenegrins living in Serbia”. This suggests that there is tension or hubris between nationalists on both sides, but does not appear to indicate that Montenegrins are at risk in that country for reason of their having lived in Serbia:

...Belgrade saved its strongest criticism for Montenegro. In the harshest response against any of the countries that have established diplomatic ties with Kosovo, former nationalist prime minister Vojislav Kostunica said Serbia should sue Montenegro in the international court. Some nationalist legislators urged Serbs not to travel to Montenegro, demanded a halt to air traffic between the two countries, and threatened retaliation against the Montenegrins living in Serbia (‘Serb fury at West over Kosovo recognition by Macedonia and Montenegro’ 2008, *The Australian*, 19 October <http://www.theaustralian.news.com.au/story/0,25197,24479186-2703,00.html> – Accessed 29 October 2008).



## FINDINGS AND REASONS

109. The Tribunal accepts that the applicant has Montenegrin citizenship, as claimed. The applicant presented a photocopy of his Federal Republic of Yugoslavia (FRY) passport recording his birthplace, and gave other oral and documentary evidence to support this claim.
110. The Tribunal finds that the applicant does not have the citizenship of any other country. Although the applicant wrote in the statement attached to his protection visa application that he has the citizenship of both Serbia and Montenegro, he clarified elsewhere that he is eligible for Serbian citizenship and has applied for it, without results thus far. The applicant's evidence is supported by country information indicating that his long-term residency and family ties in Serbia provide a basis for future Serbian citizenship, but that bilateral negotiations on dual citizenship must be resolved first. There is therefore no evidence that the applicant had Serbian citizenship at the time of application, or that he has since been granted it.
111. The Tribunal therefore assesses the applicant's claims against Montenegro. In doing so, it notes that the applicant also presented claims relating to his experiences in Serbia, and also seeks to rely on these with respect to Montenegro insofar as they illustrate more generally the social attitudes, discrimination and tension that are found in all the former Yugoslav republics (and hence also Montenegro)..
112. The applicant's claims are broad-ranging and sometimes overlapping. The Tribunal has some general concerns about the quality and reliability of these claims. In some instances, he made broad assertions that were at odds with independent information from a range of reliable sources, or appeared to be unsubstantiated allegations, sometimes conspiratorial in tone. Although the applicant stressed to the Tribunal that he has been honest in his dealings with the Department, his oral and documentary evidence to the Tribunal indicated that he had provided false documents and that he went along with his fiancée's recommendation to misrepresent their relationship. The Tribunal has other concerns about the reliability of the applicant's evidence, such as the contents of recent e-mails in which friends support the applicant's accounts of Convention-related harm in Montenegro as well as Serbia. Overall, the Tribunal formed the impression that the applicant presented claims that were sometimes exaggerated, misconstrued or otherwise unreliable, and that they therefore require careful scrutiny.
113. The Tribunal accepts that the applicant has some general concerns about returning to Montenegro. The country is a fledgling democracy that faces a range of economic and political challenges. Recent political and diplomatic tensions with Serbia over Montenegro's recognition of Kosovo independence have doubtless added to these concerns. However, the Tribunal finds that Montenegro's economic, political and security conditions do not of themselves, establish persecution within the meaning of the Act, as they do not, without more, involve systematic and discriminatory conduct (s.91R(1)(c)). The applicant also suggested that the country was a small, socially conservative country where people have a 'tribal' mentality. Again, these characteristics, even if accurate, do not amount to Convention-related persecution. The Tribunal is not satisfied that any of these matters, individually or cumulatively, give rise to a well-founded fear that the applicant will be persecuted in the relevant sense. That said, the Tribunal recognises the need to take these factors into account in its overall assessment of this application.

114. The Tribunal is satisfied that the applicant had full opportunity to present his claims and evidence during the review. He speaks fluent English, although an interpreter was present at the Tribunal hearings and assisted on occasions. The Tribunal formed the impression that there was tension between the applicant and his representative, and that their communication with each other was irregular. While the Tribunal's focus was on ascertaining whether the applicant had a well-founded fear of persecution, the applicant's evidence blurred this issue with others, such as his wish to make his case for Australian residency and his concern that various people had let him down.

*The applicant's travel history*

115. As noted at the Tribunal hearing and in post-hearing correspondence, the Tribunal finds strong evidence in the applicant's past conduct that he does not fear Convention-related persecution.

- The applicant's past travel to a wide range of countries afforded him numerous opportunities to seek refugee protection if he had needed it. This is particularly relevant given the extent to which the applicant's current refugee claims – ethnic tensions, his family's political background and Albanian aggression – relate to long-standing issues.
  - The applicant cited various obstacles to his seeking refugee protection. For instance, in one country a relative 'tried' to apply for refugee status for him but was told that it would be pointless, and (according to a new claim), the authorities in another country arrested him simply because he had a 'Serbian' (Yugoslav) passport. In sum, the applicant claimed that foreign authorities treated the Serbs (Yugoslavs) poorly, and he therefore became despondent about the prospects of obtaining their protection.
  - The applicant also referred to factors that drew him back to the then Yugoslavia or Serbia/Montenegro, such as the conflict during the 1990s, his concerns for his child and bureaucratic reasons.
  - In the Tribunal's opinion, the applicant's explanations, considered cumulatively, do not explain adequately his failure to seek refugee protection earlier. They do not support his claim that this travel abroad were 'attempts in the past to escape Yugoslavia', at least not for refugee-related reasons. This is strong evidence that, at least at that time, he did not fear Convention-related persecution anywhere in Serbia or Montenegro.
- As noted at the Tribunal hearing, the applicant's departure from Montenegro (and Serbia) – some months after he obtained his latest passport – suggests no urgency to leave either country, and casts doubt on whether he feared persecution. The applicant suggested at the hearing that he had no alternative, as FRY passport holders need visas to enter other countries. In his post-hearing submission, he explained that he had actually started preparations to leave Montenegro (and Serbia) earlier, and gave copies of e-mail messages to explain this. The Tribunal has considered this material and these explanations, but finds that they do not support the applicant's claim to have fled persecution. First, the e-mail exchanges between the applicant and his then girlfriend indicate their wish to meet up again as partners, although they had decided to misrepresent their relationship to the Department to speed up the visa process. The Tribunal has found nothing in these messages to support the applicant's claim that he was, at the same time, trying to flee persecution. The applicant may, of course, have had multiple reasons for wishing to leave his home country. Nonetheless, it is surprising that there is no hint in these private messages of either the applicant or his girlfriend being concerned for his safety. Second, the Tribunal considers

significant that the applicant appears to have made no enquiries, during this period, of any other options for temporary respite from the feared persecution.

- The applicant's failure to seek refugee protection in Australia during the initial part of his stay also casts doubt on his current claims. The Tribunal has considered the applicant's explanations for this – that he felt in limbo after the breakdown of his relationship, and that he approached a migration agent but was unable to pay the fee that she requested for the processing of an application. The Tribunal found these claims confused and obscure. It considers that, if the applicant had raised refugee-related concerns with a migration agent, and money had been a bar to seeking protection, there would have been scope for him to explore options, particularly taking into account his excellent English.
  - The Tribunal notes that the applicant later provided further details of his contacts with this migration agent, stating that she had helped him obtain a visa to Country B, and that she had also helped him open a bank account by allowing him to use her address. The applicant appears to have mentioned this in the context of showing his sincere efforts to integrate into Australian life (he also mentioned RSL club membership and other contacts), and his good faith in terms of his dealings with a migration agent and his claimed contacts with the Department. These matters do not go directly to the issue at hand, namely the applicant's failure to seek Australia's protection as an earlier stage. Even if the migration agent and others were prepared to help the applicant on some matters, this does not displace the Tribunal's concern about his failure to seek protection if he needed it.

116. In sum, the Tribunal considers that the applicant's failure to seek refugee status previously and his delayed departure from his home country raise doubts about the genuineness of his fears and the truthfulness of some of his refugee claims. It now proceeds to assess these claims in more detail, and whether they give rise to a real chance of persecution.

*Political opinion – actual and imputed - Montenegrins*

117. The applicant claims that fellow Montenegrins (particularly Serbian extremists) may persecute him for various political reasons – because he has no political affiliation; because he is a moderate opposed to Serbian extremism; because his relatives were Communists associated with Tito; and/or because he is related to a prominent politician.
118. At its core, these claims come close to asserting that the political environment in Montenegro is so charged that almost anyone can find themselves in a dispute or argument that results in violence. The Tribunal accepts that the applicant is not a member of any political party. It also accepts that he holds moderate, generally progressive political views, including support for Kosovo independence and for the arrest of Karadzic, and that he opposes Serb extremism.
119. The applicant included in his submission an article from *Vesti* indicating that a Montenegrin citizen killed another for simply expressing an opinion in favour of Karadzic's arrest, and concluded that anyone is at risk 'if your political opinion becomes public'. The Tribunal has little background to this article, such as the circumstances that led to the alleged incident or *Vesti's* objectivity in reporting on Montenegro, given recent Serbian anger at that country's recognition of Kosovo independence. In any event, the Tribunal does not accept that the article indicates that there is a real chance that any person in Montenegro who expresses a political opinion, including a moderate opinion opposed to Serbian nationalism, is at risk of politically motivated violence

120. The Tribunal finds on the evidence that political debate in Montenegro can be heated; and that political meetings such as the recent pro-Serb demonstration in Podgorica can provoke clashes, including the unusually strong police action on that occasion. There are clearly some instances of political violence. However, independent information does not support the applicant's claim that he faces a real chance of political persecution for the mere fact of having a moderate political opinion or for voicing this. The Tribunal is not satisfied that the applicant has a well-founded fear of persecution on this basis. .
121. The Tribunal notes the applicant's claim to be at risk of persecution because of an imputed political opinion arising from his relatives' association with Tito and the Communists, and a family connection with a politician. The applicant referred to some photographs that he might be able to provide to the Tribunal in the future; the Tribunal notes the availability of such material. The Tribunal accepts that the applicant has such family connections, particularly taking into account their origins in a particular area of Montenegro. However, it considers that the applicant has exaggerated the significance and consequences of this. It rejects the applicant's claim that he will be imputed with any political opinion due to these family links, whether because of Montenegro's 'tribal mentality' or because of his pride at his relatives' past contribution to Yugoslavia. While country information shows that debate about Tito and the former Communist regime arouses strong negative reactions in some situations (see paragraph 103), and that prominent politicians attract strong opposition from some, there is nothing to indicate that a person faces a real chance of political persecution because he or she is related to such persons or proud of their ancestors or relatives.

*Political opinion – former resident of Serbia*

122. The applicant also claims that he will be at risk of persecution in Montenegro as a long-term resident of Serbia. He will be viewed as a 'traitor' to Montenegro and, by implication, imputed with a pro-Serbian political opinion (hence, in stark contrast to the former claims based on his moderate, anti-Serbian political opinion).
123. As noted at the Tribunal hearing and in its post-hearing correspondence, the Tribunal has found no independent information to support this claim. In its opinion, the absence of such information is significant, given the large number of Serbians and Montenegrins who live and work in each other's countries, and given EU and others' scrutiny of these countries' human rights practices, particularly as they seek European integration. Nonetheless, as the applicant correctly pointed out in his submission, recent tensions between Serbia and Montenegro over Kosovo independence (including calls by Serb nationalists in Belgrade for retaliation against Montenegrins in that country and a disruption in bilateral relations) call for some caution in assessing this issue. Again, however, the evidence does not suggest that the respective communities have started targeting each other because of such calls.
124. The applicant claimed, referring to Montenegrins living in Serbia, that resentment and violence against Montenegrins is a long-standing and 'hidden animosity'. The Tribunal takes this and similar comments to be a more general observation on inter-ethnic tensions in the region, that might also apply to him as a former Serbian resident returning to Montenegro. However, for the reasons stated previously, the totality of the evidence does not support a conclusion that ethnic tensions are such that individual members of the communities face a real chance of persecution on any Convention ground, without more.
125. The applicant gave as one example that, because of his past residency in Serbia, Montenegrin customers forced him to accept lower prices for his work. The Tribunal considers plausible

that Montenegrin customers bargained over prices. However, given that the applicant travelled between Montenegro and Serbia and was able to work in either country, and considering the nature of the claimed disadvantage, the Tribunal does not accept that the applicant suffered or would in future suffer any serious harm (economic or otherwise); that he was 'forced' to perform work on anyone; or that he experienced Convention-related discrimination.

126. The applicant claimed at the Tribunal hearing that he was attacked as a returnee from Serbia, as also evidenced in the statement from the witness and the telephone camera photograph that was also submitted showing the applicant with cuts on body. The Tribunal has some doubts about the reliability of this claim, the supporting evidence and, most significantly, the interpretation that the applicant places on it as racially or politically motivated. The applicant explained that he had not mentioned this earlier because, at that stage, he did not have supporting evidence in the form of the witness' statement and the photograph (of which he had not been previously aware). He later also said that he had told his former representative about this claim, but she had indicated to him that she already had enough material and did not need to record this incident. The Tribunal views both claims with scepticism. It finds it difficult to believe that the applicant failed to seek the witness' support earlier, if she had direct knowledge of an incident involving his refugee experiences; that the applicant's migration agent dissuaded him from presenting a claim that is recent and so directly relevant to his application; and that the applicant was inhibited from presenting claims for lack of witness corroboration.
127. Despite these concerns, the Tribunal accepts that there was an incident in which a client attacked the applicant. However, it does not accept from the applicant's and the witness' account that what happened was Convention-related harm. The applicant claimed that this person attacked him after learning that he had lived in Serbia for some time. The Tribunal does not accept that the client and later his friend attacked the applicant for this reason. Had this been the case, it considers that the applicant would have had given it more prominence, earlier, and that he would have felt himself under considerable pressure to leave Montenegro more urgently than he did. The witness noted racist slurs being used, but she was not present at the start of the fight. The Tribunal places little weight on her characterisation of the applicant's 'problems based on nationalism' (paragraph 77), as it is obvious that she was writing for the purpose of this application. Taking into account these concerns, and given that there may be many reasons for his work to be disrupted, the Tribunal does not accept that the fight was an example of Convention-related violence. Indeed, the witness' recollection that the client told the applicant that he should 'do as he is told and as much as he is told', while somewhat ambiguous, suggests that any dispute may have been over the work itself,
128. The applicant and the witness claim that the police declined to assist when he was attacked. As noted above, the Tribunal does not accept that the attack was racially motivated or otherwise Convention-related. It accepts that the police failed to respond. The limited available material – essentially the witness' written statement and the applicant's oral evidence based on what she told him – indicates that the police were not interested in breaking up the fight and had other priorities than to investigate it later. At face value, this could suggest resource constraints, incompetence or perhaps a reluctance to intervene in known trouble-spots or particular situations. The evidence does not indicate that the police knew anything about the actual argument (including the racial slurs), or that there was any Convention-related reason for their failure to respond.

*Political opinion and race*

129. The applicant claims to fear persecution from Albanians in Montenegro, on the grounds of his race. He claims that this overlaps largely with religion – that Albanians, whether Muslim or Catholic, target Montenegrins also because of their association with the (Serbian or Montenegrin( Orthodox church), actual and perceived.
130. The Tribunal finds this claim to be in stark contrast with country information that indicates that the Albanian population is a small minority in Montenegro; that this minority does not have influence or impunity such that it represents a threat to the Montenegrin majority; and that, by way of contrast, some observers have concerns about its treatment. The applicant claimed that the Albanian minority and its supporters manipulated international opinion to garner sympathy, and that the Montenegrin authorities were complicit insofar as they refused to acknowledge this problem for fear of losing face or delaying European integration.
131. The applicant gave some examples, such as the severe underestimation of the size of the Albanian population, as many were illegal or unregistered; their domination of the town of Ulcinj; their de facto fortresses around the capital Podgorica; and the claim that the Russian mafia and others secretly support Albanian criminal gangs. The Tribunal accepts that the applicant has genuine concerns about the Albanians, as well as his reassurance that he is not xenophobic or anti-Albanian. However, it considers that, if this minority were so populous and assertive as the applicant claims – particularly in the capital city Podgorica and the applicant's most recent place of residence – it would come to the attention of independent observers, including human rights groups, European officials, visitors or others. On the evidence, the Tribunal does not accept that the Albanian minority represents a real threat to the applicant as a Montenegrin or for any other reason (such as his perceived adherence to the Orthodox church as a Montenegrin, in contrast with Albanian Muslim or Catholic faith).
132. The applicant also claims that Albanians attacked him and some friends because they were speaking Montenegrin. The Tribunal does not accept that this incident involved Convention-related harm, for the reasons that follow:
  - First, his friend's supporting statement appears to have been tailored for the purposes of this application. The Tribunal has ongoing concerns about the applicant's e-mail exchange with his other friend, in which the applicant appears to send to him the text of a statement for re-transmission as if it were his own. Although the applicant appeared surprised and disappointed at the Tribunal's observation that he may have scripted his witness' statements for them, and although the applicant went to some lengths to present printouts of his e-mail exchanges, the Tribunal still does not have before it any e-mail that would explain why the applicant was sending to his friend a complete text that appears to be written in his friend's voice. In the Tribunal's opinion, this casts some doubt over all of the texts.
  - Second, the Tribunal gives the applicant the benefit of the doubt and accepts that there was some argument or clash, but it rejects the applicant's claims as to its cause and its seriousness. The Tribunal finds the applicant's account of the incident – that the Albanians picked on him and his friends simply because they were speaking Montenegrin (and were also presumably Orthodox Christians) and that this was typical of their behaviour – to be radically at odds with independent information about the position of Albanians in Montenegro. It is confident that such racial attacks would cause alarm in Montenegro, and attract comment from a wider range of observers.
  - The Tribunal finds that this was at the very most an argument or dispute of a minor nature, and it was not initiated by Albanians on a racist (or any other Convention-related) basis. The Tribunal

finds that the applicant has misrepresented the nature and cause of the incident, and that it does not indicate that the applicant is at risk of future racial violence from Albanians.

133. The applicant has presented other claims relating to Albanian violence, sometimes perpetrated together with Serbians, directed against Montenegrins. Most of these occurred on the territory of Serbia, but the Tribunal considers them for possible relevance to the applicant's circumstances if he returns to Montenegro.
134. These claims include that an Albanian and a Serbian soldier assaulted the applicant when he was in the military; that they have destroyed Serbian, Montenegrin and Orthodox facilities in the past; that the respective governments fear the power of the Albanians and do not want to stall their bids for EU accession by acknowledging such problems; that an Albanian harmed the applicant and other locals through the sale of faulty goods; that the applicant was amongst those injured when Albanians attacked anti-Milosevic demonstrators (a friend's e-mail was presented as evidence of this claim); and that, throughout, the authorities turn a blind eye to their acts. As noted above, and discussed with the applicant, the Tribunal finds these claims to differ radically from reliable independent information from a range of reliable sources. It does not accept the applicant's explanations that the Albanians have succeeded in concealing the true situation, because it does not consider it plausible that such conduct could go unreported. The Tribunal finds the applicant's description of the events may have some basis in truth, but it does not accept his interpretation of them as evidence that Albanians and potentially others will target him in Montenegro or any other former republic of Yugoslavia. It places little weight on the friend's e-mail as independent evidence of the claimed incident.
135. The applicant has made more general claims about ethnic tension in the former Yugoslavia, between various groups. He claimed that he was forced to leave a job after local football fans objected to his employment there, as an ethnic Montenegrin. The Tribunal does not accept that the applicant was dismissed on ethnic grounds, having regard to its view that the applicant has misrepresented other past incidents as Convention-related. Furthermore, it does not accept that anti-Montenegrin taunts do not establish that he would face similar harm in Montenegro itself if he were to return there. In all, the Tribunal does not accept that a Montenegrin returning to that country faces a real chance of harm – let alone persecution – for reason of his or her race, from Albanians, Serbians or any other minority in that country.

### *Religion*

136. The Tribunal accepts that the applicant is not religious, and considers himself an atheist. Country information indicates that the majority of the Montenegrin population – some 74 percent – is Orthodox, whereas only less than 5 percent declare themselves to have no religion. The Tribunal has found some references to tension between branches of the Orthodox church (see paragraph 108), including accusations from the Serbian branch that its property is being seized by 'Titoist atheist parties', with the connivance of the Montenegrin church and authorities. Another report (paragraph 107) refers to tensions in 2002 when the Serbian church was expected to clash with 'independent youth and artistic groups'. These reports suggest that some religious groups, particularly within the Serbian Orthodox Church, are assertive. However, this is a far cry from the suggestion that non-religious persons are at risk of persecution from religious groups or others because of their non-membership of any church. Country information does not support this, and the Tribunal is confident that the persecution of agnostics or atheists, if it occurred, would attract attention.

137. The applicant also claimed that Albanians and perhaps others will perceive him to be an Orthodox Christian because of his surname. The Tribunal accepts that Albanians and others may presume that the applicant has an Orthodox background, because of his Montenegrin surname, taking into account the predominance of that religion. These persons may consider it likely, though not necessarily certain, that he is also a practicing Orthodox Christian. As the applicant acknowledged at the Tribunal hearing, this claim overlaps largely with his now-dismissed claim that the Albanians will target him as a Montenegrin – in other words, they will tend to equate his ethnicity and his religion. The Tribunal does not accept that the applicant will be at risk of persecution from Albanians for reason of his ethnicity or religion, or any combination of the two. Nor does the Tribunal accept, on the available material, that anyone else in Montenegro that will target the applicant because they (mistakenly) perceive him to be an Orthodox Christian.

### *Conclusions – Montenegro*

138. The Tribunal has considered all of the applicant's claims - including those relating to his experiences in Serbia that were intended to demonstrate ethnic and communal tensions throughout Montenegro and Serbia, and the political volatility of these countries. It considers that the applicant has exaggerated and misconstrued his past experiences in these countries. The Tribunal finds that, although the applicant may have witnessed arguments and tensions over racial, political and religious issues from time to time, he does not have any significant profile relating to these issues, and has never been subject to any Convention-related harm (let alone persecution).

139. The Tribunal does not accept that the mere fact that the applicant is a Montenegrin, that he holds moderate political views, that he is non-religious or anything else in his personal background (such as his family history) gives rise to a real chance of Convention-related persecution if he returns to that country.

140. The Tribunal has taken into account that the applicant has lived in both Serbia and Montenegro, travelling between the 2 countries; that he has worked mostly in the informal sector; and that he has lived a somewhat unsettled life, remaining registered in one place and staying with various friends. The Tribunal does not accept that this lifestyle was the result of, is evidence of, or gives rise to a well-founded fear of any Convention-related persecution. It appreciates, however, that there may have been other factors, such as the applicant's disrupted family life, that have caused him some hardship and led to this lifestyle.

### *Possible Statelessness*

141. The Tribunal received advice from DFAT (paragraph 90 above) during the course of this review, in the context of another matter before it, in which Serbian officials stated that a FRY passport issued on the territory of Serbia would not, of itself, suffice to establish the Montenegrin citizenship of a person born in Montenegro. DFAT had been unable to contact the Montenegrin authorities to confirm this advice, to find out what further documentation or evidence might be necessary, or to enquire about the implementation of the recent citizenship law in practice.

142. The Tribunal has found above that the applicant has Montenegrin citizenship, for the reasons stated above. The DFAT advice gave it cause to revisit this issue, particularly taking into account that the applicant's passport was issued in Serbia and records (incorrectly, as the applicant advised) his place of residence. It was in light of this new information that the



Tribunal decided to invite the applicant to a second hearing, to clarify with him issues concerning his citizenship and possible statelessness.

143. The applicant's further advice at the second hearing shed light on this matter – namely that on arrival in Montenegro with his FRY passport he would simply be required to present evidence of an address in Montenegro in order to register with a municipal authority, and that he could readily fix this by having a friend allow him to use their address. The Tribunal finds on this basis that there is no doubt about the applicant's Montenegrin citizenship. It detects no evidentiary or other requirements that might raise questions about the effectiveness of his Montenegrin citizenship/nationality. In these circumstances, it is not necessary for the Tribunal to consider the question of his possible statelessness.

### **CONCLUSIONS**

144. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

### **DECISION**

145. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer: PRMHSE