

0908334 [2010] RRTA 210 (30 March 2010)

DECISION RECORD

RRT CASE NUMBER: 0908334

DIAC REFERENCE(S): 2009/78 CLF2009/104032 CLF2009/150102

COUNTRY OF REFERENCE: Albania

TRIBUNAL MEMBER: Carolyn Wilson

DATE: 30 March 2010

DECISION: 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 Albania arrived in Australia [in] June 2009 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] August 2009. The delegate decided to refuse to grant the visa [in] September 2009 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] October 2009 for review of the delegate's decision.
5. [In] October 2009 the Department purported to vacate the first decision on the basis it was tainted by jurisdictional error. The jurisdictional error identified by the Department was the finalisation of the decision a day before the date agreed to by the delegate for the applicant to provide further information.
6. [In] November 2009 the delegate refused the visa application a second time.
7. The Tribunal finds that the first 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.
8. The applicant applied to the Tribunal [in] December 2009 for review of the delegate's second decision. The Tribunal has dealt with the second application to the Tribunal in a separate decision.

RELEVANT LAW

9. 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.
10. 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).
11. 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’

12. 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.
13. 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.
14. 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.
15. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
16. 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.
17. 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.
18. 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.

19. 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.
20. 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.
21. 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.

CLAIMS AND EVIDENCE

22. The Tribunal has before it the Department's files 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.
23. The applicant was represented in relation to the review by his registered migration agent.

Claims to the Department

24. The applicant was born in Shkoder, Albania, on [date deleted: s.431(2)]. He moved to Greece in 1996, where he worked as a [occupation deleted: s.431(2)], and obtained permanent residency in Greece in 2008.
25. The applicant married an Albanian woman in Greece in 1998. They divorced in Albania in 2007. They had one child, a daughter born [date deleted: s.431(2)]. His ex-wife and child live in Greece and he provided financial support for the child.
26. The applicant divorced his wife because he learnt she had been unfaithful in 2005. Under the 'Code of Kanun' he should have killed her, but he didn't want blood on his hands. By divorcing his wife he had dishonoured her but also dishonoured his family, who had urged him to kill his wife.
27. In January 2008 the family of the applicant's ex-wife warned him he must take her back and re-marry her, and his plan to get away with starting a new life in Greece could not be realised. A mutual friend acted as a mediator, constantly visiting him and urging him to re-marry his ex-wife.
28. The applicant had contact with his daughter on Sundays and occasionally on Saturday. She came with a cousin of his ex-wife. On one Saturday visit he came home from work to find his daughter was not there. His passport was open in his bedroom showing the recently granted visa to Australia. He realised his ex-wife would now know he was coming to Australia. He called her and was told 'you had an opportunity to regain respect, you think

that you can go to Australia and disappear and leave your family and ours. After your divorce we who were present when we told you to organise yourself and remarry your wife, are now telling you that we can not trust you any more and you will get a big surprise very soon'. He says this occurred [in] April 2009.

29. The applicant was stabbed by an unknown man one night in Greece [in] May 2009. He was treated by a doctor who was a friend of his cousin and he stayed at the doctor's house until he was well.
30. The applicant did not report the attack to the Greek police as it is known they discriminate against Albanians and they tell Albanians who are involved in ethnic conflict to go back to Albania to sort it out there. The Albanian authorities could not protect him as northern Albania is lawless and is beyond the control of the authorities in Albania.
31. His ex-wife's family has connections in Albania, Greece, other EU countries and Australia.
32. The applicant claimed to fear persecution for reason of his membership of the following particular social groups:
 - Men in Albania who are subject to the code of Kanun.
 - Men in Albania who have divorced their partners.
 - Men in Albania who have dishonoured their families by not practicing the code of Kanun.
 - Men in Albania who have left their partners and gone abroad.
 - Albanian citizens who are subject to the customary law, the Code of Lek Dukagjini, or the Kanun, and are subject to persecution by reason of the inability of the current Albanian government to halt customary law blood feuds or protect those persons who are rendered victims of such feuds in northern Albania.
33. The applicant also claims the Albanian authorities would deny him State protection for reason of his membership of the particular social group of men who abhor the practice of the Code of Kanun.
34. [In] September 2009 the applicant attended an interview at the Department and handed up the following documents:
 - Birth certificate for his daughter.
 - Statement from his friend [Person A].
 - Report from psychologist [Person B] stating she evaluated the applicant [in] September 2009 and found him to be extremely stressed, anxious, depressed, disorientated, disengaged and fearful.
 - Police clearance certificate from Albania.
 - Certificates of matrimony, family and education.

35. The delegate found [in] September 2009 that none of the particular social groups claimed by the applicant were particular social groups under the Convention. Furthermore, the delegate found the essential and significant reason why the applicant would be targeted by his ex-wife's family was revenge for divorcing and dishonouring her, and not for any Convention related reason.
36. Following the decision the migration agent complained the decision had been made before the date they were given in which to provide additional information, that is [a date in] September 2009. The Department agreed the decision had been made before the further submissions were due to be received and purported to vacate the decision [in] October 2009.
37. [In] November 2009 the Department received submissions and additional information from the applicant. He submitted he belongs to a particular social and religious group that practice the Code of Kanun and has been a victim of the practice of this Code. He also claims to be persecuted because of his race and religion, being an Albanian Catholic. He claims Albanians are not well regarded in Greece. He provided the following:
- Two reports on the murder of Dr Fatmir Thaci in Durrës, one report untranslated.
 - Letter from [Dr A] stating he could not help the applicant with a medical report as he did not want to create any consequences for his family by helping someone in a blood feud.
 - Statement from the applicant's cousin [Person C] stating he could explain in detail the dangers for the applicant in returning to Albania or Greece, the break down of authority in Albania and their inability to protect the applicant, recent deaths due to blood feuds and the reasons why the doctor in Greece did not want to give evidence.
 - Original and translated family certificates for the applicant and his daughter.
 - Original and translated penal clearance certificate for the applicant.
 - Report on the Code of Kanun from the Refugee Documentation Centre (Ireland) Legal Aid Board.
 - Declaration by [name deleted: s.431(2)] on the consequences of Kanun Law.
38. [In] November 2009 the delegate made a second decision. The delegate found the applicant was not a refugee for the same reasons as the first decision.

Applications to the Tribunal

39. The applicant appeared before the Tribunal [in] February 2010 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's cousin [Person C]. The Tribunal hearing was conducted with the assistance of an interpreter in the Albanian and English languages. The hearing was held by video link at the applicant's request. Although the applicant lives in [State deleted: s.431(2)] where the Member was located, the applicant requested a video link be organised to Melbourne. He feared being seen coming to the Tribunal by anyone in the Albanian community in [City A].
40. At the commencement of the hearing the Tribunal asked the representative if there were any concerns about the applicant's capacity to give evidence. The representative submitted the

way this application was handled by the Department has caused the applicant considerable anguish and concern. He indicated he would provide an updated report from a psychologist and a report from the applicant's general practitioner. He did not raise any concern about the applicant fitness to answer questions at the hearing.

41. The Tribunal summarises the applicant's evidence as follows:

- He moved to Greece for economic reasons in 1995. His three brothers and one sister remain in Albania.
- He currently has no contact with his ex-wife or his daughter, who are still in Greece.
- His problems arose when his ex-wife was unfaithful. When he discovered this he was very uncomfortable and didn't know what to do. He decided the best thing would be to divorce his wife and he discussed this with his family. His family did not agree with him divorcing his wife and told him he was disgraced and he had disgraced them. According to the Kanun he should kill his wife for being unfaithful. He didn't want to do this because he is a modern man and opposes the Kanun. Also he didn't want his daughter to be without her mother and father. If he killed his wife, he would have to go to gaol, and his daughter would have no parents. If he killed his wife or if he was killed by her family, a blood feud would start between the families. His wife's family told him they had given him a decent woman and they didn't believe she had been unfaithful. They pressured him to take her back. He was under pressure from both sides.
- He applied for a visa to come to Australia because of all the pressure and to get away from his ex-wife's family. His ex-wife's family found out about his plans to come to Australia when someone went into his house [in] April 2009. He found his passport had been opened up to the page where the visa was. He rang his wife's house and she told him 'we're going to fix you up'. While talking to his wife he could hear a man's voice in the background swearing and threatening him. Up until that point he had been using politics to pretend reconciliation was possible between in order to appease her family, but now they knew he had no intention of reconciling.
- [In] May 2009 he was attacked near his house when a car cut him off. Someone got out of the car and jumped on top of him and stabbed him. He remembers them saying to him 'die like a dog' and 'you've spent a lot of time organising things, you had time to fix up your family problems'. He didn't recognise the man who stabbed him or the man driving the car, as it was dark and it all happened very quickly.
- He didn't seek help from the Greek police because they discriminate against Albanians and wouldn't help him.
- He didn't go to a hospital but instead sought help from a doctor privately.
- He left Greece as soon as his wounds healed.
- He decided to come to Australia because his cousin [Person C] was here and he is the only person in the family who has supported him.

- His main fear if he returns to Albania or Greece is he will be killed by his ex-wife's family. He also fears his own family because they have urged him to kill his wife and he has disgraced them. Either way his life is in danger.
- He will not get any support from the Albanian police as they don't have the power to protect him. Also they discriminate on the basis of religion. He is Catholic but the majority of the police are Muslim.
- Because he opposes the Kanun, he is outside of his community. No one will respect him or want to associate with him.
- In Albania, Kanun law has been getting stronger.

42. The applicant's representative made the following submissions:

- Because of the applicant's opposition to the Kanun he has distinguished himself from his community. Both his family and his ex-wife's family have threatened him.
- There is evidence in the US State Department Report of a high level of police corruption.
- The representative referred to a report of OHCHR dated 2 December 2004 which whilst concerned mostly with the discrimination faced by women under customary law and the Kanun, was relevant in its recommendations that the State should adopt and implement policies to combat and prevent the application of discriminatory customary law to reinforce policies against domestic violence and to assist victims.
- The applicant is targeted because he belongs to a group of men who oppose the Kanun. He's distinguished himself from people who follow the Kanun and he is being discriminated against because of it.
- He is a member of a particular social group 'men in Albania who have dishonoured their family by not practising the code of Leke Dukagjini or Kanun'.
- The applicant was given a bullet as part of the dowry when he married. The purpose of giving him this was that in case his wife was unfaithful, it was permissible for him to kill her.
- The State tolerates the Kanun or customary law and will not protect him. The applicant has no confidence in the police in Albania because they tolerate the Kanun.

43. The applicant's cousin [Person C] gave the following evidence:

- He is a cousin to the applicant, their father's were brothers.
- They were very close when they grew up in Shkoder, until he moved to Tirana in 1988. After 1988 they saw each other once or twice a year. The applicant's father died when he was [young] and [Person C]'s father acted as a father to him. They were like brothers. [Person C]'s father was proud of the applicant's achievements.

- He supports his cousin as he believes he did the right thing in not killing his wife. However he knows the applicant's brothers, who are not well educated, live by the Kanun. They have become quite vengeful.
 - When the applicant rang and told him about his life being in danger he suggested the applicant come to Australia so he could help him.
 - He is very concerned about the applicant's physical and psychological health.
 - Where they grew up, in northern Albania, is a very specific region in Albania where they followed the Kanun. Although this was suppressed by the Communist regime, once that regime was abolished they went back to practising the Kanun. The State allows this region to remain isolated.
 - The people who live there are almost 100% Catholic, although the police in Albania are mostly Muslim.
44. [In] February 2010 the Tribunal received a facsimile from the representative attaching a report from psychologist [Person B] dated [in] February 2010. The facsimile also stated a GP report was to follow and 'please be advised that further documentation may be provided by the Applicant in this matter'. At the date of decision no further information had been provided nor has the Tribunal received any formal request to extend the date given at the hearing, that is [a subsequent date in] February 2010, by which date the applicant should provide further information.
45. The report of [Person B] contains the following information:
- She assessed the applicant [in] September 2009 and [in] February 2010. She has also had telephone contact with the applicant since September 2009.
 - She found the applicant to be flat, reserved and agitated. He was particularly fearful of not being able to have his support person [Person C] in the room with him, as was the case when he was interviewed by the Department. He is suspicious, fearful and paranoid. [In] August 2009 he was diagnosed with an adjustment disorder with anxious mood and prescribed a sedative Diazepam, 2-5mg.
 - The applicant was rather distressed that the Tribunal Member was not physically present at the hearing and was concerned he may not be listened to or his story might not be understood by a Member at a distance.
 - The applicant has been seeing his GP [Dr B] every two weeks for therapeutic intervention of a psychological nature.
 - He fears for his life if he returns to Greece or Albania.

Country Information

46. The UK Border Agency Operational Guidance Note for Albania 8 December 2008 reports on the Kanun and blood feuds as follows:

3.6 Blood feuds

3.6.1 Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution as a result of a ‘blood feud’

3.6.2 Treatment. Feuds and revenge killings began to resurface in the 1990s during Albania’s transition from communism to democracy. These crimes reactivated the old *Kanuns* (traditional codes), specifically the *Leke Dukagjini Kanun*. The Albanian blood feud is a centuries old custom that draws on tribal tradition and customary law. A distinguishing feature of blood feuds from other crimes is that they are carried out publicly. Northern Albanians, in particular, have respect for the *Kanun* and have passed it from generation to generation for hundreds of years. All blood feuds involve violations of honour.¹⁴

3.6.3 Definition of honour is broad and may include: insults, property issues, trafficking of persons, accidental killings, murder, conflicts over water rights, being disrespectful of a woman and accusing a person of lying. The classic blood feud can only pass through the male bloodline. In modern blood feuds, it is reported that people no longer adhere to strict rules such as the minimum age requirement of 16 years. Women, traditionally exempt from blood feuds, are said to have become targets. Further reported developments are the pre-emptive strike and the paid blood feud assassin. The concept of pre-emptive strike allows an individual who believes a rival family is looking to take blood from his family to strike first by killing a male member of the rival family, thereby eliminating risk to himself and his family. In the case of the paid assassin, an individual who does not want to commit the actual murder pays a third party to carry out the killing. Many blood feuds take place in remote areas where people do not want to seek recourse through the legal system, predominantly in rural, northern areas but can reportedly also occur elsewhere although less commonly in urban areas.¹⁵

3.6.4 Blood feuds can be resolved by reconciliation through a mediator who tries to broker a settlement. One way to resolve a blood feud by mediation is to arrange a marriage of two members of the rival families. A blood feud can also be resolved through monetary compensation. An agreement of the offending party to move away and total forgiveness without any compensation are other possible solutions. Unless the injured party in a blood feud initiates forgiveness, calling on the services of a reconciliation committee is the only way to resolve a feud. There are a number of reconciliation committees in Albania. For example, the Committee of Nationwide Reconciliation (CNR) is an NGO that works toward encouraging the rule of law in Albania and discouraging the use of *Kanun* traditions. It has contacts with Albanian state organisations and conflict resolution groups and deals with national policy, arranges conferences and issues reports on blood feuds. An attestation letter is a document that confirms whether a blood feud has occurred. The head of the CNR states that his organisation is the sole authorised provider of attestation letters.¹⁶

3.6.5 Some children were unable to leave their homes, including attending school, due to fear of reprisal from blood feuds. Figures on the numbers of affected children vary; the latest figures from the Ministry of Interior in 2007 indicate about 20 children permanently sequestered, while NGOs cite a figure as high as a few hundred. These children were generally home schooled. According to the CNR, 182 children remained endangered by blood feuds involving their families; 86 of these in particularly dangerous circumstances.¹⁷

¹⁴ Canadian Refugee Board (IRB) Issue paper ‘Albania Blood Feuds’, May 2008

¹⁵ Canadian Refugee Board (IRB) Issue paper ‘Albania Blood Feuds’, May 2008

¹⁶ Canadian Refugee Board (IRB) Issue paper ‘Albania Blood Feuds’, May 2008

¹⁷ USSD Albania 2007

3.6.6 The CNR states that blood feud killings are down by 50% so far in 2008 and the number of feuds it reconciles is expected to double this year. However, there are estimated to be 1,600 families confined to their homes because of blood feuds.¹⁸ One of the leading coordinators for CNR states that an estimated 114 families are thought to be living in hiding in greater Tirana.¹⁹ The USSD notes that statistics vary on blood feud activity and that the *kanun* is followed in only a few isolated communities. According to the Interior Ministry, 2 of the 96 murders during 2007 were related to blood feuds, the number of such killings having dropped due to an increase in investigations. During 2007, an NGO-sponsored conference called on the government's Co-ordinating Council on the Fight Against Blood Feuds to take a more proactive role.²⁰

3.6.7 Government efforts relating to blood feuds have reportedly focused on prevention rather than assistance to affected families. Legislation exists to deal with people who commit blood feuds but there is no special law to protect victims. Article 78 of the 1995 Criminal Code, amended in January 2001, sets out the punishment for murder committed as a result of a blood feud. In 2003, the Albanian parliament passed a law entitled 'On the Dispute Resolution through Mediation', outlining who is eligible for blood feud mediations, who can work as a mediator and how the mediation process is conducted.²¹ In 2005, the Albanian parliament approved a law establishing a coordination council, chaired by the president, to develop a national strategy against blood feuds and to coordinate activities of government agencies (not yet active).²² In February 2007 the parliament approved amendments to the Criminal Code to criminalise blood feuds and make them punishable by a 3-year sentence. The Court of Serious Crimes tried blood feud cases. Premeditated murder, when committed for revenge or a blood feud, is punishable by 20 years or life imprisonment, higher than the usual sentence for murder.²³

3.6.8 Sufficiency of protection. Local police units report to the Ministry of the Interior and are the main force responsible for internal security. As noted above, the law provides for 20 years to life imprisonment for killing linked to a blood feud and blood feuds are punishable by a 3-year sentence. The government has set up a special crimes court and a witness protection programme. There have been prosecutions in blood feud murder cases. The Commissioner for Human Rights in Europe stated that police managers have supported reconciliation activities and the CNR.²⁴ Despite formal efforts made by the authorities to address the issue, some involved in blood feuds may not report the matter to the authorities because of mistrust of state institutions and/or because they choose to execute retribution outside of the legal system.²⁵ There is no evidence to indicate that individual Albanians fearing the actions of those seeking to carry out a blood feud cannot access protection from the Albanian police and pursue these through the legal mechanisms that have been set up to deal with blood feuds.

3.6.9 Internal relocation. The law provides freedom of movement within Albania and the Government generally respected this right in practice. Internal migrants must transfer their civil registration to their new community to be entitled to government services, and must prove they are legally domiciled either through property ownerships, a property rental agreement or utility bills. Many cannot provide this proof and thus lack access to essential services.²⁶ Whilst there may be some difficulties accessing local services internal relocation to escape the localised

¹⁸ Spiegel online 'Albania seeks solutions to its blood feud problem', accessed 17.10.08
Albania OGN v 8.0 December 2008

¹⁹ Christian Science Monitor 'Peacemaker breaks the ancient grip of Albania's blood feuds'

²⁰ USSD Albania 2007

²¹ Canadian Refugee Board (IRB) Responses to Information Requests (RIR) 22.09.06

²² Canadian Refugee Board (IRB) Issue paper 'Albania Blood Feuds', May 2008

²³ USSD 2007/Canadian Refugee Board (IRB) Issue Paper 'Albania Blood Feuds', May 2008

²⁴ Canadian Refugee Board (IRB) Issue paper 'Albania Blood Feuds', May 2008

²⁵ Canadian Refugee Board (IRB) Issue paper 'Albania Blood Feuds', May 2008

²⁶ USSD 2007

threat of a blood feud will not generally be unduly harsh. Whether internal relocation would enable an individual to avoid a threat in an individual case will depend on the commitment of those attempting to enforce the blood feud.

47. According to Amnesty International AI Index :EUR 11/02/2006, 30 March 2006, CX150427

The Kanun of Lek Djukagjini. People do not use the Kanun as part of their daily life, but if a woman has an affair, or if she leaves her home and goes back to her own family, then they use the word Kanun without thinking so that they can justify punishing her.(47)

The ancient customary law set out in the Kanun of Lek Dukagjini (Kanuni e Lekë Dukajinit) was first written down and codified in the early 20th century. The Kanun gave a man the right to beat and publicly humiliate his wife wives if she disobeyed him,(48) and provided that: If a husband beats his wife, he incurs no guilt ... and her parents may not make any claims on him because of the beating. If a man beats his wife bloody, and she complains to her parents, the men must give an explanation.(49)

The Kanun also provided that, under certain conditions, a man may kill his wife with impunity (or leave her) for adultery and for betrayal of hospitality. For these acts of "infidelity" the husband was entitled to kill his wife without incurring a blood feud, since her parents had received the price of her blood, and given him a cartridge with which to shoot her as part of her dowry, and guaranteed her conduct on the day of her wedding.(50) Women were otherwise explicitly excluded from blood feuds.

Although observance of the laws of the Kanun was prohibited during the communist period, from the early 1990s there has been resurgence in the use of customary practices, including blood feuds and revenge killings, especially in the north of the country, though often in a form that has little in common with the rules of the Kanun. Although many tend to dismiss this as somehow characteristic of people from "the north", the resurgence may also be credibly explained as a response to the breakdown of the rule of law in the period of transition, combined with a lack of trust in the state's judicial system to guarantee justice, and as a response to political and social change, a reclaiming of traditions prohibited under communism.

In recent years the Albanian government has taken serious measures to address blood feuds through concerted action by the police and judicial authorities, and with NGOs established with the aim of the non-violent resolution of blood feuds. Other NGOs, like the Shkodra Centre for Peace and Justice, have also been active in conflict resolution, and in programmes designed to inform both women and children of their rights, outside of those expressed in traditional codes. However, aspects of customary law continue to inform gender relations, and in this context, are used to justify domestic violence.

48. The US Department of State International Religious Freedom Report, 26 October 2009 provides:

The Constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion. The Government generally respected religious freedom in practice. There was no change in the status of respect for religious freedom by the Government during the reporting period. There were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice. The U.S. Government discusses religious freedom with the Government as part of its overall policy to promote human rights.

Section I. Religious Demography

The country has an area of 11,100 square miles and a population of 3.6 million. No reliable data were available on religious participation or membership; the last official census including such data was held in 1939. The majority of citizens do not actively practice a faith; however, the four traditional religious groups are Muslim (Sunni), Bektashi (a form of Shi'a Sufism), Orthodox Christian (the

Autocephalous Orthodox Church of Albania), and Roman Catholic. In addition, there are substantial numbers of Protestant denominations and other religious groups, including Baha'is, Jehovah's Witnesses, and members of The Church of Jesus Christ of Latter-day Saints (Mormons).

The State Committee on Cults reported a total of 245 religious groups, organizations, and foundations in addition to the four traditional religious groups. This number included 34 Islamic organizations and 189 Protestant organizations, mostly associated with the Albanian Evangelical Alliance (VUSH).

Section II. Status of Government Respect for Religious Freedom

Legal/Policy Framework

The Constitution provides for freedom of religion, and other laws and policies contributed to the generally free practice of religion. The law at all levels protects this right in full against abuse, either by governmental or private actors.

The Government is secular. According to the Constitution, there is no official religion and all religions are equal; however, the predominant religious communities (Sunni Muslim, Bektashi, Orthodox, and Catholic) enjoy a greater degree of official recognition (e.g., national holidays) and social status based on their historical presence in the country. Official holidays include holy days of all four predominant faiths.

The Government does not require registration or licensing of religious groups; however, the State Committee on Cults maintains records and statistics on foreign religious organizations that contact it for assistance. Religious movements may acquire the official status of a juridical person by registering with the Tirana District Court under the Law on Nonprofit Organizations, which recognizes the status of a nonprofit association regardless of whether the organization has a cultural, recreational, religious, or humanitarian character. Registration grants religious groups the right to hold bank accounts and own property. Tax-exempt status was granted during the reporting period to the four traditional religious communities; however, because of new agreements reached with the Government on October 24, 2008, they are required to reregister as a religious community in order to qualify. Other religious groups without bilateral agreements with the Government continued to petition for tax-exempt status.

The State Committee on Cults, under the jurisdiction of the Ministry of Tourism, Culture, Youth, and Sports, is charged with regulating relations between the Government and religious communities as well as protecting freedom of religion and promoting interreligious cooperation and understanding. The committee claims that its records on religious organizations facilitate the granting of residence permits by police to foreign employees of various religious organizations. No organization reported any difficulty obtaining residency permits during the reporting period. However, as a general rule, foreign missionaries were issued one-year residency permits instead of the five-year permits allowed by law for residents in the country for more than two years. The committee continued working with the Government on criteria that would allow residency permits of up to five years for well-established religious organizations with long-term ties to the country.

Article 10 of the Constitution calls for separate bilateral agreements to regulate relations between the government and religious communities. On October 24, 2008, the Government signed agreements with the Muslim, Orthodox, and Bektashi communities. The Catholic Church has had such an agreement with the Government since 2002. VUSH, a Protestant umbrella organization, has asked to conclude a bilateral agreement. Among the advantages of having the agreement are an official recognition of the community, prioritized property restitution, and tax exemptions. Government financial support and state-subsidized clergy salaries are to be implemented based on a law on the financing of religious communities passed on June 5, 2009.

According to the Ministry of Education, public schools are secular and the law prohibits ideological and religious indoctrination. Religion is not taught in public schools. According to official figures, religious communities, organizations, and foundations had 103 affiliated associations and foundations, with 101 of those managing 101 educational institutions, of which 15 were officially religious-affiliated schools. By law the Ministry of Education must license these schools, and curriculums must comply with national education standards. The Catholic and Muslim groups operated numerous state-licensed schools and reported no problems obtaining licenses for new schools. The Orthodox Church and the Bektashis operated strictly religious educational centers for the training of clerics.

Restrictions on Religious Freedom

The Government generally respected religious freedom in practice. There was no change in the status of respect for religious freedom by the Government during the reporting period.

There is no law prohibiting the wearing of religious clothing or symbols. School principals have the right to set standards for "appropriate clothing," which at times included restrictions on public displays of religious symbols. During the reporting period, three female public high school students were prevented from attending classes for wearing headscarves.

The Government continued to address claims from each of the four traditional religious groups regarding the return or restitution of property seized during the former communist era; however, many of the property claims remained unresolved. With the newly signed bilateral agreements, the State Agency for the Restitution and Compensation of Property was instructed to give priority to properties owned by religious communities.

The Orthodox Church continued construction of a new cathedral in Tirana on land that it received as compensation for land seized by the communist government, but it cited lack of action on other property claims throughout the country.

Both the Orthodox Church and the Catholic Church included in their restitution claims religious icons and precious manuscripts seized by the communist government that remained in the national archives. The Albanian Islamic Community continued to request building permits for a new mosque on land that was returned to the community through the post-communist restitution process. The request remained under consideration by the Municipality of Tirana.

There were no reports of religious detainees or prisoners in the country.

Forced Religious Conversion

There were no reports of forced religious conversion, including of minor U.S. citizens who had been abducted or illegally removed from the United States or who had not been allowed to be returned to the United States.

Section III. Status of Societal Respect for Religious Freedom

There were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice, nor were any substantial acts of vandalism reported.

Section IV. U.S. Government Policy

The U.S. Government discusses religious freedom with the Government as part of its overall policy to promote human rights.

The U.S. Embassy supported the efforts of the State Committee on Cults to develop and complete bilateral agreements between the state and some religious communities. Embassy officials were active in promoting religious tolerance, sponsoring interfaith centers in the cities of Shkoder, Elbasan, and Tirana and engaging young persons, women, and other community members in joint activities such as seminars and community gatherings.

During the reporting period, the Embassy sent one prominent religious leader to the United States through the International Visitor Leadership Program. Embassy officials continued to urge the Government to address religious property claims and return buildings, land, and other property to religious groups that lost them under communist rule.

49. The US Department of State 2008 Human Rights Report: Albania, 25 February 2009 provides:

a. Arbitrary or Unlawful Deprivation of Life

...

Societal killings continued during the year, resulting from vigilante action (including both "blood feud" killings and revenge killings), criminal gangs, and organized crime.

Statistics varied on blood feud activity. According to the Interior Ministry, there were four blood feud related killings, out of a total of 85 murders during the year, a decrease from previous years. According to the Ministry of the Interior, this is the lowest number in 18 years. Police restarted investigations in some older cases, and uncovered perpetrators of 81 murder cases from previous years. Nongovernmental organizations (NGOs) cited higher levels of blood feud activity and numbers of families effectively imprisoned in their homes out of fear of blood feud reprisals. The tradition of blood feuds stems from a traditional code of honor that is followed in only a few isolated communities. In 2007 the parliament amended the criminal code to criminalize blood feuds and make them punishable by a three year sentence. The Court of Serious Crimes tried blood feud cases. The law punishes premeditated murder, when committed for revenge or a blood feud, with 20 years' or life imprisonment.

50. The US Department of State 2009 Human Rights Report: Albania, 11 March 2010 provides:

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings. The killings of two political figures--Socialist Party member of parliament Fatmir Xhindi and a Christian Democrat leader, Alex Keka--were under investigation and remained unresolved at year's end.

Investigations continued into allegations that, during the 1999 Kosovo conflict, traffickers kidnapped civilians from Kosovo and brought them to the country, where some were killed and their organs sold. In April the EU Rule of Law Mission in Kosovo announced that it had begun a preliminary investigation into the allegations. In August Council of Europe special rapporteur Dick Marty led a mission to Serbia and Albania to further investigate. Marty's report to the Council of Europe remained pending at year's end.

During the year there were continuing reports of societal killings, including both generational "blood feud" and revenge killings. Such killings sometimes involved criminal gangs. According to the Interior Ministry, there was one blood feud-related killing during the year, which was a decrease from previous years. According to NGOs approximately 120 families were effectively imprisoned in their homes from fear of blood feud reprisals; half of these families were located in Shkoder. The Court of

Serious Crimes tried blood feud cases. The law punishes premeditated murder, when committed for revenge or a blood feud, with 20 years' or life imprisonment.

b. Disappearance

There were no reports of politically motivated disappearances.

At year's end, the trial was ongoing of Arben Sefgjini, who previously served as the head of the National Intelligence Service (SHISH), and three of his former SHISH colleagues, Budion Mece, Avni Kolladashi, and Ilir Kumbaro, for the 1995 kidnapping and torture of Remzi Hoxha and two other citizens. Hoxha's fate remained unknown.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution and law prohibit such actions; however, police and prison guards sometimes beat and abused suspects and detainees.

On January 21, the Council of Europe's Committee for the Prevention of Torture (CPT) released a report on the June 2008 visit by a CPT delegation to a number of the country's prisons and detention centers. The CPT reported credible allegations of physical mistreatment; abuse mostly occurred during police questioning, including severe beatings incorporating blows to the feet and to the palms and backs of the hands with objects such as a baton. The most serious allegations received by the delegation involved the police stations in Korca, Pogradec, and Elbasan. However, in contrast with CPT visits in 2005 and 2006, the majority of persons interviewed by the delegation stated they had been treated correctly while in police custody.

The Albanian Helsinki Committee (AHC) and the Albanian Human Rights Group (AHRG) reported that police sometimes used excessive force or inhuman treatment. In 2008 the AHC reported that it received 91 complaints of mistreatment by police. The majority of these complaints concerned unjustified stops by police, detention past legal deadlines, failure to make citizens aware of their rights when detained, and poor conditions of detention centers. According to the AHRG, police more often mistreated suspects at the time of arrest or initial detention. Roma, Balkan Egyptians, and persons engaging in homosexual conduct were particularly vulnerable to police abuse.

As in past years, the police sometimes used threats and violence to extract confessions.

Prison and Detention Center Conditions

The Ministry of Justice operated all detention facilities; however, the Ministry of Interior oversaw police detention facilities, which housed detainees for up to 48 hours after their arrest. After 48 hours, arrestees were placed under Ministry of Justice supervision.

In its January 21 report on conditions of detention in the country, the CPT delegation noted that, with the exception of provision of food, hardly any progress had been made at the time of its June 2008 visit to improve physical conditions of detention in police detention facilities. In particular it found that detention conditions at the Police Directorate General in Tirana were "totally unacceptable." It found all cells to be very small, in a poor state of repair and hygiene, and to have little or no access to natural light and fresh air. There were also reports of prison overcrowding. To alleviate overcrowding,

the government opened five new prisons during the year and in April passed a probation law that allows those convicted of minor crimes to be released on a probationary basis. Nearly 80 former inmates participated in this program. In its January 21 report, the CPT delegation noted that some cells in the unit for female prisoners at Prison No. 313 in Tirana were severely overcrowded, with up to four prisoners held in a cell measuring seven square meters (75 square feet). This was the only facility in the country for female pretrial detainees. In November, the government signed a memorandum with a local NGO to increase the size of the facility.

The government allowed local and international human rights groups, the media, and others to monitor prison conditions. The law provides for an ombudsman to implement the National Mechanism for Torture Prevention. The ombudsman received complaints of abuses by the government and has the authority to monitor judicial proceedings and inspect detention and prison facilities; the ombudsman can initiate cases in which a victim is unwilling or unable to come forward. Although the ombudsman lacked the power to enforce decisions, he acted as a monitor for human rights violations. The most common cases included citizen complaints of police and military abuse of power, lack of enforcement of court judgments in civil cases, wrongful dismissal, and land disputes.

As a result of the June 2008 finding by the ombudsman that inmates at Burrel prison suffered substantial psychological and physical abuse, the Ministry of Justice conducted more training for prison staff and alleviated overcrowding. During the year the ombudsman did not receive any complaints regarding Burrel prison.

During the year the ombudsman found that minors were being held together with adults at the Korca prison and Durres pre-detention facilities. Specifically, he found that 14- to 18-year-olds were being together. The ombudsman recommended that this practice cease; implementation was in process at year's end.

During the year, 186 prison guards and officials had disciplinary proceedings initiated against them for misconduct.

Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, there were some reports that police occasionally arbitrarily arrested and detained persons.

Role of the Police and Security Apparatus

Local police units report to the Ministry of Interior and were the main force responsible for internal security.

Notwithstanding police officer recruitment reforms and other standardization by the Ministry of Interior, the overall performance of law enforcement remained weak. Unprofessional behavior and corruption, compounded by low salaries, remained major impediments to the development of an effective civilian police force.

During the year the ombudsman processed and completed 151 of 169 complaints against the police mainly on arrest and detention issues; the ombudsman resolved 63 in favor of the complaining citizen.

Arrest Procedures and Treatment While in Detention

The constitution requires that authorities inform detained persons immediately of the charges against them and of their rights. Police must immediately inform the prosecutor of an arrest. The prosecutor may release the suspect or petition the court within 48 hours to hold the individual further. The court must decide within 48 hours whether to place a suspect in detention, require bail, prohibit travel, or require the defendant to report regularly to the police. In practice prosecutors requested and courts routinely ordered detention.

Courts must provide indigent defendants with free legal counsel. Police often failed to inform defendants of this right. The AHC and several NGOs offered free legal advice and advocacy services to indigent persons.

The law requires completion of most pretrial investigations within three months; however, a prosecutor may extend this period to two years or longer. The law provides that the maximum pretrial detention should not exceed three years; there were no reports during the year that this limit was violated. However, lengthy pretrial detentions often occurred due to delayed investigations, defense mistakes, or the failure of defense counsel to appear.

Limited material resources, lack of space, poor court calendar management, and insufficient staff prevented the court system from adjudicating cases in a timely fashion.

e. Denial of Fair Public Trial

The constitution provides for an independent judiciary; however, political pressure, intimidation, widespread corruption, and limited resources sometimes prevented the judiciary from functioning independently and efficiently.

The judicial system is composed of district courts, the serious crimes court, military courts, and appellate courts. There is a High Court that hears appeals from the appellate courts, and a Constitutional Court that reviews cases involving constitutional interpretation and conflicts between branches of government and cases of individuals alleging denial of due process.

The High Council of Justice has authority to appoint, discipline, and dismiss district and appeals court judges. The council consists of the president, the justice minister, the head of the High Court, nine judges selected by the National Judicial Conference, and three members selected by the parliament. Judges may appeal their dismissal to the High Court.

On February 16, the Constitutional Court suspended and referred to the Council of Europe's Venice Commission for further review the controversial "lustration" law, which allows the dismissal from office of a wide range of officials who participated in "political processes" while serving in higher-level positions under the Communist government. Adjudication of these cases was to be addressed by an extrajudicial commission appointed by the government-controlled parliament. The law appeared aimed at achieving the government's partisan political ends. In October the Venice Commission ruled that the lustration law, as written, does not comply with the country's constitution.

In 2008 the European Court of Human Rights issued a judgment against the country for violation of Article 6 (right to a fair trial) of the European Convention on Human Rights.

Trial Procedures

The law provides for the right to a fair trial with defendants presumed innocent until convicted. The court system does not provide for jury trials. Prosecutors and defense lawyers present cases to a judge or panel of judges, and defendants have the right to access all evidence that prosecutors present to the judges. Defendants have the right to appeal. The law mandates an alternative sentencing system for juveniles.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees; however, former political prisoners under the Communist government complained that they had either not received the compensation due them under the law or that payments were coming too slowly.

Civil Judicial Procedures and Remedies

There is a functional civil law system where citizens have access to redress; however, it was susceptible to corruption, inefficiency, and political tampering. The Bailiff's Office is responsible for enforcing civil judgments. The law allows private bailiffs to enforce judgments, facilitating both private and public entities to help enforce rulings. However, the law was not enforced during the year.

Property Restitution

The laws governing restitution or compensation for private and religious property confiscated during the Communist era are complex, and a large number of cases involving conflicting claims by new owners and the state, on one side, and former owners on the other remained unresolved. In September 2008 the European Parliament released a briefing paper on property restitution in the country which noted that the first round of judgments of the European Court of Human Rights had found "serious deficiencies" in the administrative and judicial system of the country with respect to property restitution and compensation of former owners. Other problems identified in the paper included the government's slowness in setting up restitution administrative structures in the Property Restitution and Compensation Agency at both the central and regional department level and the domination of the restitution process by informal and corrupt transactions.

During the year the government provided 1.2 billion lek (\$12 million) in compensation to former owners of private property. As in previous years, the government did not provide restitution or compensation to religious organizations for religious properties and objects that the former Communist government confiscated or damaged.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The constitution and law prohibit such actions, and the government generally respected these prohibitions in practice.

51. The Overseas Security Advisory Council reported in its Albania 2008 Crime and Safety Report:

Overall Crime and Safety Situation

The overall security situation continues to improve throughout Albania. In the spring of 1997, Albania had significant civil unrest due to the collapse of pyramid schemes in the country which caused a major financial crisis. In 1998, a Democratic Party leader was assassinated, sparking a two-day period of civil unrest in the capital of Tirana and other parts of the country. Since then, the Albanian government has improved the country's law enforcement and security institutions. Albanian police and security forces continue to achieve success in combating the illegal weapons and drug trade. Criminal activity has been greatly reduced since the late 1990s and early 2000s. For example, the recent homicide statistics are as follows: in 2005 there were 131 homicides, in 2006 there were 199, and in 2007 there were 87 homicides.

While overall criminal activity seems to be diminishing, there is a marked increase in the number of reports of various forms of domestic violence, including sexual assaults. It is still not clear whether this represents a true increase in domestic violence or a greater willingness on the part of victims to report previously unreported crimes. Albania took a significant step towards addressing this issue in 2006 by passing a domestic violence law that allows for orders of protection. Domestic violence continues to be a major issue for the Albanian State Police; many of the murders and assaults that occurred were a direct result of domestic conflicts.

Incidents of armed robberies decreased slightly in Albania in 2007 and these incidents generally do not end in violence. Members of the American and international communities are generally well-liked by the Albanian populace and are not targeted because nationality.

Political Violence

Albania has not experienced political violence since the civic unrest of the late 1990s. The vast majority of Albanians are strongly secular, regardless of their religious beliefs. Radical Islam has few adherents among Albanians. In recent years several Islamic Non-Governmental Organizations (NGOs) have made attempts to increase their popularity in Albania, but have met with very limited success. Following the September 11, 2001 attacks in the United States, there was a strong showing of Albanian support for the United States. Local elections in February 2007 were mostly peaceful with only two notable incidents of violence – neither of which resulted in loss of life. Presidential elections in 2007 also passed with no public demonstrations or violence. Occasional protests and demonstrations throughout 2007 and in early 2008 were small and peaceful. These demonstrations were most frequently aimed at power shortages and other economic infrastructure complaints. The declaration of Kosovo's Independence on February 17, 2007, was met with peaceful joy.

Post-specific Concerns

While organized crime remains a serious problem in Albania, the violence related with it rarely affects the international community. There are very few areas in Albania that are not recommended for American visitors, and the reason these areas are not recommended relates mostly to limited police response and protection. Americans are held in high regard throughout Albania. In 2007, the American community has had limited crime problems in Albania. The most dangerous aspect of living and working in Albania is the reckless driving. Below are some of the documented crime issues encountered by Americans and members of the international community in Albania:

- A number of direct-hire U.S. Embassy employee vehicles were vandalized in Embassy residential neighborhoods.
- The U.N. Security Director's home was burglarized.
- The French Consul General was a victim of a home invasion.

- A home invasion by an armed intruder on an international missionary's house in Tirana near the Embassy.
- An assault of an American in a store in northern Albania.

Police Response

Police have a visible presence throughout Tirana and the other larger cities in Albania. Due to the limited resources and manpower, their response is often delayed. Police tend to respond more rapidly when contacted by members of the international community. The U.S. Embassy has two 24/7 roving patrol vehicles to augment the Albanian State Police for the U.S. Embassy compound and housing clusters. One concern regarding police performance pertains to their low salaries – between \$300 and \$500 per month – but overall abilities continue to improve. Specifically, Albanian police are improving counter-narcotic and organized crime training, but there are still cases of police corruption.

The police emergency number in Albania is 129. The Albanian government is also implementing a plan to place English speaking officers in a number of accessible police stations throughout the capital who would facilitate communication with foreigners in the event of an emergency.

52. The European Commission's Report on Albania in 2009 reports the following in relation to police in Albania:

4.3.4. Police

Some progress can be reported in the area of police reform.

The implementation of the State Police Law has shown positive effects on law enforcement.

The rules of procedure of the State Police were adopted in December 2008. However, staff transfers and dismissals continue to take place in breach of the State Police law.

Strengthening of the complaints and discipline process and better integration with the work of the Office of Internal Control is required. Disciplinary sanctions are not consistently applied.

There has been some improvement in police organisation and staffing, although the overall management of police human resources is still unsatisfactory. An operational action plan for the implementation of the strategy on community policing was adopted in November 2008 to cover the period 2008-2010.

Further efforts are required as regards the recruitment, retention and training of police officers. High turnover of previously trained and competent staff has continued. Despite the number of training courses provided, regular training activities — especially for the first management level of the State Police and for police officers involved in the use of special investigative measures — are required. The overall investigative capacity of the police remains weak. There is limited awareness of using an intelligence-led approach on a national scale and limited use of criminal intelligence tools. The regional police offices now have electronic access to the MEMEX information system. Crime statistics continue to be inadequate.

Cooperation between the State Police and other law enforcement agencies and with the prosecution services and the judiciary remains insufficient and ineffective. Problems remain in cooperation at the operational level among the Police, the General Prosecutor and Customs.

The Judicial Police Law is not yet fully implemented. Implementation of the South-East Europe Police Cooperation Convention has continued. Following the entry into force of the strategic cooperation agreement with Europol, the signature of an operational cooperation agreement is pending.

Following the explosion in 2008 at Gërdec, the government has started to address the question of stockpiles of old ammunitions. However, management and disposal of small arms, explosives and the remnants of war remains a serious problem in Albania. The current legislation covering control and access to weapons and explosives is not in compliance with the European standards. A thorough

revision and approximation is needed especially in terms of clear definitions of arms, markings and traceability or deactivation.

Overall, Albania is only starting to address some of its priorities in this area. However, further efforts are needed to increase investigative capacity, enhance cooperation with the prosecution and the judiciary in particular, and improve human resources management.

http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_enpdf

FINDINGS AND REASONS

53. The Tribunal finds the applicant is a citizen of Albania. The Tribunal basis this finding on the applicant's Albanian birth certificate and passport. His claim to refugee status is therefore assessed against Albania as his country of nationality.
54. The Tribunal accepts the report from [Person B] as evidence of the applicant's psychological distress. For reasons given below, the Tribunal accepts the applicant's claims that he has been harassed and pressured by both his ex-wife's family and his own family, and physically assaulted by a person associated with his ex-wife's family. The Tribunal accepts this has had a serious impact on the applicant's mental health. The Tribunal asked the representative at the commencement of the hearing if he was aware of any issue with the applicant's capacity to give evidence. The representative responded that the way the application had been handled had caused considerable anguish and concern, but he did not raise any concern about the applicant's capacity to give evidence. The Tribunal formed the opinion that the applicant was able to present evidence and answer questions at the hearing without apparent difficulty. He was emotional at times but was able to present his claims clearly. His evidence was consistent with the claims he presented to the Department and was consistent with the submissions of his migration agent.
55. [Person B]'s report refers to the applicant's dissatisfaction with the hearing being held by video link as he feared he may not be listened to or his story would not be understood. The Tribunal notes the applicant requested his matter be heard by video link as he preferred to travel to Melbourne rather than attend in [City A] in person. The Tribunal agreed to accommodate this request. The Tribunal believes the applicant's claims were appropriately expressed, listened to and understood, notwithstanding the hearing was held by video link.
56. On the basis of the consistent and plausible oral evidence and submissions of the applicant and his witness, the Tribunal accepts the applicant has been targeted by his ex-wife's family because he is seen to have dishonoured her and the family. The Tribunal also accepts the applicant's own family have pressured and threatened him. The Tribunal accepts the applicant was stabbed in Greece and that although he does not know the identity of the perpetrator, that it was organised by his ex-wife's family on the grounds of threats made prior to the stabbing and statements made by his attacker.
57. The Tribunal accepts the applicant has a subjective fear and accepts there is more than a remote chance he could be harmed by his ex-wife's family or his own family if he returned to Albania or Greece.
58. The question for the Tribunal is whether the applicant's fear is for reason of one of the five Convention reasons.

Membership of a Particular Social Group

59. The applicant claimed to be persecuted for membership of a particular social group. The particular social group has been variously described as people subject to the Kanun, people opposed to the Kanun, and people who have divorced and left their partner to go abroad. At the hearing the representative described the particular social group on which the applicant relies as ‘men in Albania who have dishonoured their family by not practising the code of Leke Dukagjini or Kanun’.
60. The meaning of the expression ‘for reasons of ... membership of a particular social group’ was considered by the High Court in *Applicant A*’s case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:
- ... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...
61. Whether a supposed group is a ‘particular social group’ in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be feared for reasons of the person’s membership of the particular social group.
62. In a number of Albanian cases referring to the Kanun similar particular social groups have been postulated. One particular social group was ‘citizens of Albania who are subject to the operation of the customary law Code of Leke Dukagjini (the Kanun)’ (*SCAL v MIMIA* [2003] FCA 548 (von Doussa J, 5 June 2003) (‘SCAL 1’) at [17] to [21]. Another group postulated could be described as ‘men in Albania targeted in accordance with the Kanun’ (*SCAL v MIMIA* [2003] FCA 548 (von Doussa J, 5 June 2003) (‘SCAL 1’) at [29]). These groups have been found by the Court not to constitute a particular social group because, on the evidence, the only identifying feature of such a group was a shared fear of persecution. A somewhat narrower social group consisting of ‘males in the general population who have become the target of a blood feud because some family member has killed a member of another family’ has also been rejected for the same reason (*SCAL v MIMIA* [2003] FCAFC 301 (Carr, Finn & Sundberg, JJ, 18 December 2003) at [9]; see also *STXB v MIMIA* [2004] 139 FCR 1). The Full Court in *SCAL v MIMIA* [2003] FCAFC 301 (Carr, Finn & Sundberg JJ, 18 December 2003) (‘SCAL 2’) said (at [9]):
- the Code (Code of Leke Dukagjini (the Kanun)) is to be treated, at least in the geographical areas from which the appellant comes, as a law or practice of general application. He referred to authorities establishing that whilst a particular social group may be defined in a way that includes numerous members, a law or practice which, although in a sense persecutory, applies to all members of society cannot create a particular social group consisting of all those who bring themselves within its terms. See also *Applicant A v MIEA & Anor* (1997) 190 CLR 225 and *MIMA v Khawar* (2002) 210 CLR 1.

63. The Tribunal therefore finds ‘men in Albania who are subject to the code of Kanun’, ‘men in Albania who have dishonoured their families by not practicing the code of Kanun’ and ‘Albanian citizens who are subject to the customary law, the Code of Lek Dukagjini, or the Kanun, and are subject to persecution by reason of the inability of the current Albanian government to halt customary law blood feuds or protect those persons who are rendered victims of such feuds in northern Albania’ are not particular social groups.
64. The Tribunal has considered whether ‘men in Albania who have divorced their partners’ and ‘men in Albania who have left their partners and gone abroad’ are particular social groups. The Tribunal does not accept these groups constitute particular social groups, as the Tribunal does not accept that divorced men or men who have left their partners are recognised as a social group set apart from the rest of the community.
65. Even if it were accepted that the particular social groups claimed by the applicant existed, the Tribunal finds the persecution he fears is not for reason of membership of these groups. The essential and significant reason for the harm he fears is for reason of divorcing his wife, which has led to their families seeking revenge against him for bringing dishonour. He was not targeted for being a member of a group of men who were subject to or opposed the Kanun, who divorced their wives or who left their partners to go abroad. He was targeted by the families for reason of his personal actions and their desire for revenge.
66. The Tribunal does not accept the applicant has a well founded fear of persecution, now or in the reasonably foreseeable future, for reason of membership of any of the particular social groups claimed by the applicant. The Tribunal also does not accept the harm the applicant fears from his ex-wife’s family or his own family is for any other Convention reason.

State Protection

67. The applicant has claimed the State will not protect him either because he is Catholic or because the State tolerates the Kanun or cannot or will not protect people caught up in the Kanun.
68. It is necessary to consider whether the applicant’s case involves a selective and discriminatory withholding of State protection for a Convention reason of the sort referred to in *Minister for Immigration and Multicultural Affairs v Khawar* (2002) 210 CLR 1. As the High Court emphasised in that case, in this context it is not sufficient to show maladministration, incompetence or ineptitude by the police or that the failure is due to a shortage of resources. What is required is State toleration or condonation of the persecution in question and systematic discriminatory implementation of the law: see *Khawar* per Gleeson CJ at [26] and per McHugh and Gummow JJ at [84] to [87].
69. The Tribunal relies on the conclusion in the UK Border Agency Operational Guidance Note that ‘there is no evidence to indicate that individual Albanians fearing the actions of those seeking to carry out a blood feud cannot access protection from the Albanian police and pursue these through the legal mechanisms that have been set up to deal with blood feuds’. The Tribunal considers this conclusion equally applies to the applicant’s situation of the harm he fears under the Kanun.
70. The Tribunal refers also to the US Department of State Human Rights Report: Albania for 2008 and 2009 which speaks of steps being undertaken by the Albanian authorities to deal with blood feuds. The report states that police are investigating some older cases of crimes

under the Kanun, that the parliament amended the criminal code to criminalize blood feuds and that the Court of Serious Crimes tried blood feud cases.

71. On the evidence from the country information cited above, the Tribunal does not accept that the authorities in Albania withhold protection from people who are either subject to or oppose the Kanun and in fact finds they are taking steps to protect such people. Given the steps being taken by the Albanian authorities to investigate and criminalise actions taken under the Kanun, the Tribunal does not accept there is a state tolerance or condonation of such acts.
72. The Tribunal has also considered whether state protection would be withheld for reason of the applicant's religion.
73. The Tribunal has before it the US Department of State's *International Religious Freedom Report 2009* That report discusses the state generally respecting freedom of religion in practice and addressing the concerns of religious groups including Catholics in Albania. It states 'there were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice'.
74. On the basis of the US Department of State report the Tribunal does not accept the Albanian authorities would withhold protection from the applicant as a Catholic.
75. The Tribunal does not accept that state protection would be withheld on a discriminatory basis from the applicant for a Convention reason. Accordingly the applicant does not have a well founded fear of persecution now or in the reasonably foreseeable future for a Convention reason.
76. The applicant has claimed the authorities in Greece discriminate against Albanians and he would not be able to obtain state protection in Greece As the Tribunal has already found the applicant does not have a well founded fear of persecution within the meaning of the Convention in Albania, his country of nationality, it does not need to consider whether the applicant could obtain state protection in Greece.

Religion

77. The applicant claimed he will be discriminated against in Albania because he is Catholic. The Tribunal understood the applicant's claim to refer to the deliberate withholding of police protection because he is Catholic, but there appeared to be an implied claim that Catholics in a broader sense are persecuted in Albania
78. The applicant gave evidence at the hearing of Catholic religious symbols being targeted by Muslims, but did not make any claims of past persecution or a fear of persecution in the future for himself in relation to this.
79. Catholics are one of the four traditional religious groups in Albania. The US Department of State *International Religious Freedom Report* cited above states 'there were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice'.
80. Having regard to the independent country information the Tribunal does not accept that Catholics per se face a real chance of Convention related persecution in Albania, either by the state or non-state agents acting with the active or tacit complicity of the state. The Tribunal does not accept the applicant has a well founded fear of persecution in Albania, now or in the reasonably foreseeable future, for reason of his religion.

CONCLUSIONS

81. 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

82. 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