

H-DMG-V1

Heard at Field House

IM (Risk-Objective Evidence-
Homosexuals) Albania CG
[2003] UKIAT 00067

On 15 July 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

08/09/2003

Before:

**Mr J BARNES
Mr M L JAMES**

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Appearances:

For the Appellant: Mr J Reynolds of Counsel instructed by
Duncan Lewis & Co, Solicitors

For the Respondent: Mr J McGirr, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Albania born on 1 November 1980 who arrived in the United Kingdom on 7 August 2002 and claimed asylum on arrival. After submitting a Self-Evidence Form and further representations his application was refused by the Secretary of State for the reasons contained in a letter dated 14 August 2002. On 15 August 2002 the Secretary of State issued directions for his removal to Albania after refusal of leave to enter following refusal of his asylum application. He appealed against that decision on both asylum and human rights grounds and his appeal was heard

on 7 October 2002 by an Adjudicator, Mr J K H Rintoul, who broadly accepted the credibility of the Appellant's account and that on that basis he would have a well-founded fear of persecution in his home area near Kukes in north-east Albania, but dismissed the appeal on the basis that it would not be unreasonable for him to relocate to another part of the country where he would be safe from the localised threat which faced him. The Appellant now appeals against that decision to us with leave.

2. The basis of the Appellant's claim is that he is a homosexual who in 1998 was discovered in a relationship with a fellow Albanian at his partner's home. This resulted in the Appellant being reported by his partner's family to his own family, who severely beat him and kept him confined to the house for a short period. When he promised that he would not continue the relationship he was allowed out but he did meet his partner again and they continued in a relationship until 2002, when he was again discovered with his partner by his family. On this occasion he was again beaten and he was locked up in his family home for a period of some five months during which he says that he promised to leave and never return again if they would let him go, but was told that he had broken a similar promise before. He remained in close confinement in his family home until his mother, fearing for his life at the hands of his father and uncle, let him out and gave him some money, saying that he should go and never return. This occurred in late July 2002 and the Appellant then went to Tirana but left on the same night travelling to Italy and thence through Europe to the United Kingdom. As we say, in broad terms the Adjudicator accepted that account and he made certain findings in relation to the situation of homosexuals in Albania. He said this about the country background evidence at paragraphs 9.2 and 9.3 of his determination:

"9.2 I note from the background documentation that although it is no longer illegal there is a considerable amount of societal discrimination if not outright hostility towards homosexuals in Albania. This can be seen from the Amnesty International report at (sic) page D58 of this Appellant's bundle. I also find that this shows a degree of unwillingness on the part of the authorities to investigate attacks against homosexuals.

9.3 As regards the police force in Albania, I note that at paragraph 4.24 of the CIPU Report that one of the most serious problems involving public order and (sic) internal security is that the police officers are largely untrained, ill-paid and often unreliable. While I note that, according to the same Report, police officers have received training on gender issues and human rights in

general, the Council of Europe found that excessive use of force and ill-treatment by law enforcement officials continued to be a widespread problem.”

Presumably on the basis of those findings he subsequently said this at paragraphs 9.18 and 9.19 of his determination:

“9.18 Each appeal has to be determined on its own facts. I have therefore to consider whether any general sufficiency of protection is available to the Appellant on the specific facts of this appeal. I find that there is no willingness on the part of the police or the courts in Albania to detect, prosecute or punish those who attack homosexuals. I find that this is linked to a strong societal disapproval of homosexuals in Albania.

9.19 I also find that there is a substantial risk of the police ill-treating the Appellant on account of his homosexuality if he explained to them that this was the reason for any attack on him.”

3. We have to say that those general findings are in our view wholly unsustainable on the evidence before the Adjudicator. At page D58 of the Appellant's bundle, which is an extract from the Amnesty International report of 18 May 2001, there is a paragraph headed “Ill-treatment of Homosexuals”. That records that until 1995 homosexual relations between men constituted a criminal offence in Albania punishable by up to ten years imprisonment, but in March 1994 Shoqata Gay Albania (SGA) was founded in Tirana although shortly thereafter three of its members were detained and severely beaten in Tirana police station. In 1995, however, homosexual relations between consenting adults were decriminalised and the SGA was officially registered with the Minister of Justice. It is then said that nonetheless homosexuals continue to suffer from public prejudice and discrimination which has led some to leave the country.
4. Apart from that incident in 1994 the only other incident relating to homosexual discrimination which is specifically dealt with in that passage of the report is an incident on 7 April 2001 when a Jordanian citizen, who was Secretary General of the SGA, and a friend, who was a transvestite, were assaulted in Tirana by four members of the Republican Guards on an occasion when they went to the barracks of the Republican Guards in order to meet a friend who was serving there as a conscript. When they had enquired for him and were waiting for him to come out to join them they were attacked by four men in plain clothes and no-one would come to their assistance. They subsequently sought to complain at the headquarters of the Republican Guard and, although initially denied, they were nevertheless eventually

permitted to make a formal complaint. One of the two then left the country shortly afterwards and the other was able successfully to engage the attention of the Albanian Human Rights Group who issued a statement condemning the ill-treatment they had suffered and calling on public opinion and the authorities to show tolerance and to put aside homophobic prejudices and discrimination.

5. Beyond that there is no evidence whatsoever produced on behalf of the appellant to suggest that there is generalised treatment of homosexuals in Albania which is of a persecutory nature or in breach of their protected human rights, as Mr Reynolds accepted in his submissions to us. So far as the question of the treatment by the police of homosexuals is concerned there is equally no evidence at all that they are treated adversely (apart from the single incident in 1994 referred to above), and the Appellant says that he never sought the protection of the police in relation to the difficulties which he encountered with his own family in his home village.
6. Mr Reynolds sought to rely before us on the generalised references to a lack of training and discipline on the part of the police. We certainly accept that there is evidence that those who are detained and arrested by the police on suspicion of criminal activity may be ill-treated, but that is very far from saying that there is any evidence to support general ill-treatment by the police of those whom they consider to be homosexuals. Indeed, in the same Amnesty International report there is a passage which deals with the progress being made in relation to human rights in Albania. It refers to non-governmental organisations, including the Albanian Helsinki Committee, providing human rights education not only to the police but also to other sectors of society including prison staff, schools and medical experts. The Ministry of Public Order promoted public awareness of legal provisions relating to the police in March 2001 with a series of full-page advertisements in the press, including key constitutional provisions such as the right not to be subjected to torture or cruel, inhuman or degrading punishment or treatment. There is extensive monitoring of human rights issues by non-governmental organisations in Albania which have specific call lines or complaints centres where victims can bring complaints which, where appropriate, are brought to the authorities' notice and publicised. Legal advice is available and in February 2000 an ombudsman, the People's Advocate, was elected, establishing a further institution dedicated to the monitoring of human rights observance and to seeking appropriate redress for violations. His role is extensively dealt with in the latest CIPU Assessment of April 2003 at paragraphs 6.2 and 6.3. It is clear that it is a functioning office which is increasingly receiving complaints of human rights violations on the part of the police, the military, lack of enforcement of court judgments,

wrongful dismissal, land disputes and similar matters. The number of complaints is steadily increasing over the years since its establishment. It is said that it has contributed to resolve a number of highly controversial cases concerning property and blood feuds and helped to improve the conditions of detained people. In none of these passages is there any reference to there being any specific problems so far as homosexuals in Albania are concerned. If there were such a problem, given the degree of reportage which now exists by international bodies, we have no doubt that it would be a matter which would receive publicity in those reports.

7. For those reasons we are satisfied that the generalised findings made by the Adjudicator at paragraphs 9.18 and 9.19 are simply unsustainable on the evidence which was before him. In such circumstances applying the ratio in **Borrisov v Secretary of State for the Home Department** [1996] Imm AR 524, it is not only the power but indeed the duty of the Tribunal to reverse such findings. We are satisfied on the evidence that there is no country background evidence which supports a reasonable likelihood that homosexuals as such in Albania are subject to any action on the part either of the populace or the authorities which would amount to persecution for the purposes of the Refugee Convention or would be in breach of their protected human rights.
8. Having said that, however, there is no challenge to the findings which relate to the specific history of this Appellant. The Secretary of State has not seen fit to lodge any notice of appeal against the Adjudicator's finding that in his home area, by reason of the behaviour of his father and uncle only, he has a localised fear of persecution by reason of his sexual orientation. The Adjudicator then went on to find that there was no evidence before him to support the contention that the Appellant faced persecution elsewhere in Albania. He did not find that the Amnesty International report was sufficient as it dealt with one incident only and made a specific finding that there was no evidence that the Appellant would face ill-treatment serious enough to constitute persecution other than in his home area, albeit he might face some discrimination. On that basis his conclusion was that it would be safe for the Appellant to live in Albania other than in his own home area. It is apparent from the Appellant's own statement that the primary concern of his father and uncle was that he should not continue to lead the family into general disapproval locally and there is no evidence that should he relocate there would be any attempt to pursue him once he has removed himself from his own home area.
9. The Adjudicator went on to find that it was not unduly harsh to expect the Appellant to do so. It is right, as claimed in the grounds of appeal, that he makes no specific findings as to why he reaches that conclusion but equally the matter was only put to him in the

most generalised terms in the skeleton submissions filed on his behalf for the Adjudicator hearing. It was said that he feared he might come into contact with someone who knew his family and that he might not be able to express his sexual orientation without being subjected to further ill-treatment generally in Albania. As we have already said there is no evidence to support that proposition and it seems to us mere speculation that his family, having achieved their objective of having him removed from his own home area, would have any further interest in pursuing him elsewhere in Albania.

10. The Adjudicator did say at paragraph 9.16 of his determination that he accepted that if the Appellant returned to Albania it would become known to his family eventually. There is no indication of the basis on which he arrived at that finding but Mr Reynolds urged upon us that the population of Albania was only some 3 million and therefore it might well occur. This again, as he accepted, is speculative. There would have to be a reasonable likelihood at least that this would occur and that if it did there would be any interest in pursuing him further. For the reasons which we have expressed we do not think that there is any evidence which discharges the evidential burdens in those respects before us.
11. For the above reasons we are satisfied that the Adjudicator's findings in relation to internal relocation are sustainable on the evidence which was before him and nothing which we have heard today would lead us to conclude otherwise ourselves. Accordingly this appeal is dismissed.

J Barnes
Vice-President