

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 8 June 2004

Date Determination notified:

21 June 2004

Before:

Mr P R Lane (Vice President)

Mr A J Cragg CMG

Mr C J Hodgkinson

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation

For the appellant : Ms J. Fisher, Counsel, instructed by Messrs Clore & Co. Solicitors

For the respondent : Ms T. Hart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Albania, appeals with permission against the determination of an Adjudicator, Mr A.J. Olson, sitting at Hatton Cross, in which he dismissed on asylum and human rights grounds the appellant's appeal against the decision of the respondent to give directions for the appellant's removal from the United Kingdom.
2. The appellant's account was essentially as follows. He and his family lived in Tirana, Albania, having gone to that city in 1982 from the north east of the country. In December 2002 the appellant's brother was involved in an accident between his vehicle and a motorcyclist. The motorcyclist later died in hospital. The appellant and his family

arrived at the hospital to find the family of the motorcyclist in a distressed state. They abused the appellant's family, saying that they would never be forgiven for what had happened. The appellant inferred that a 'blood feud was started at this point' (statement: B6).

3. After leaving the hospital, the appellant's family decided that they would ask one of their neighbours to intervene with the motorcyclist's family. This neighbour called 'Zymer' went with two other men from the community to speak to the victim's family.
4. That same night, the appellant said that his brother 'left home. I think that the situation was too much for him and he was very afraid. He did not tell anyone that he was leaving. I have no idea where my brother is now.'
5. The neighbour who went to the other family was told that they were intent on getting revenge. Having returned, the neighbour said that the funeral of the motorcyclist would be held on 30 December 2002 and the appellant's family asked the neighbour to see whether it would be possible for them to attend the funeral in order to pay their respects. The neighbour did so but replied that the motorcyclist's family did not want any Catholics at the funeral. The appellant in his statement says that 'I am not sure how they found out that my family were Catholic'.
6. Earlier in his statement (B5) the appellant had described how in the area of Tirana where they lived

'My family were subjected to harassment and discrimination, on account of our religion. Tirana is not a big town really and in our area I would say that everyone knew that my family was Catholic. I would estimate that over 60% of the population in the area where we lived were Muslims. We were often verbally abused, especially if we were spotted going to church or buying pork, for example. I have been called a "stupid, idiot, Catholic" and "dirty Catholic scum" on many occasions. I have never been seriously physically abused but I have been slapped around the face and had stones thrown at me" .

7. On 10 January 2003 the appellant said that he left home to go shopping and 'heard the voices of two men approach him from behind. They called him by his name, Tonin, and said that his life was going to end, referring to him as 'dirty Catholic scum'. The appellant hid in a bunker and heard gunshots aimed at the field nearby. Having remained in a bunker for about an hour he left and went home. He told his family

what had happened. Thereafter he stayed in his house for fear of being killed.' (determination, paragraph 2.7).

8. At paragraph 2.8 of the determination, the Adjudicator records that, on the following day, the appellant said his father had gone to the police in order to seek assistance. The police checked the file and said that the motorcyclist's family had 'not reported the accident and were not pressing official charges'. The appellant appears to have assumed that the family had 'taken the law into their own hands'. The appellant claimed that the police had told his father that there was nothing the police could do in a situation like this and that the police were afraid for their own lives because of the rise in the numbers of blood feuds.
9. At paragraph 2.9, the Adjudicator noted that the appellant's family did not think that any reconciliation organisation could help them. There was then a further incident on 18 January 'when the appellant's wife noticed a car parked outside the home with some men in it'. At this point the appellant sought the assistance of his father who arranged for the appellant to travel to the United Kingdom.
10. After arriving in the United Kingdom, the appellant said that he walked around for two or three hours before stopping a passer by and explaining that he was from Albania and wanted to seek asylum. That person apparently took him to Croydon on the train and showed him the way to the Home Office where he made his claim (2.11).
11. The Adjudicator, at paragraph 6.15, considered that the appellant's story of what happened to him after he arrived in the United Kingdom was 'totally lacking in credibility'. As a result, the Adjudicator 'concluded that the appellant's credibility was seriously undermined'.
12. That said, however, it is apparent from paragraphs 6.1 to 6.14 of the determination that the Adjudicator accepted to the requisite, lower standard of proof that the appellant's brother had been involved in a road accident as a result of which a motorcyclist had died, that the bunker incident of 10 January 2003 had occurred and that the appellant's wife had seen people sitting in a car outside the house on 18 January 2003. The Adjudicator, however, did not accept that the appellant was the object of an Albanian blood feud (paragraph 6.5) but found that, even if he was, the appellant could safely return to Albania without the other family becoming aware of his return (paragraph 6.14).
13. The grounds of appeal contend that the Adjudicator was not entitled to find that a blood feud had not arisen between the appellant's family and the family of the deceased motorcyclist. It is asserted that the

Adjudicator, in reaching his conclusion on this matter (at paragraphs 6.5 to 6.8 of the determination) failed to have regard to the appellant's account, which described the attitude of the motorcyclist's family towards the appellant's family, when both were present at the hospital, that they would never forgive the appellant's family for what they had done and that they wanted to avenge the death of the motorcyclist.

14. The grounds also contend that during cross-examination of the appellant, he said that at least one of the men who supposedly followed him on 10 January 2003, was a member of the motorcyclist's family '100% because they call me by my name and I do not have any quarrel with anyone else who will go to such lengths'.
15. The nature of Albanian blood feuds is set out at paragraphs 6.130 to 6.136 of the April 2004 CIPU Report on Albania. The blood feud has its origins in customary practices of mediaeval or even earlier origin. The rules of the blood feud were formalised during the fifteenth century and have become known as the Kanun or 'the law of Lek'. The institution of the blood feud is most apparent in the mountain regions of northern Albania (6.133) and 'the vast majority of contemporary feuds were the result of disputes over land and water rights' (6.132). According to paragraph 6.135, the Kanun has traditionally served 'as the foundation of social behaviour and self-government for the clans of northern Albania. In particular, the Kanun regulates killings in order to stop the total annihilation of families.' Having re-emerged as a significant social phenomenon following the fall of the Communist regime in Albania, it can be seen from the table set out in paragraph 6.143 that blood feuds appeared to reach their height during the late 1990s. Since that time, at least according to US State Department figures, there has been a falling off in the number of deaths due to blood feuds. In 2003, the US State Department records there were more than fourteen killings, although it has to be said that the World Food Programme (sic) is recorded as stating that there were a thousand such deaths.
16. One of the criticisms levelled at the Adjudicator's determination by the appellant is that the Adjudicator wrongly relied upon the Tribunal determination in *Koci* [2002] UKIAT 08006 and, in particular, in the finding of the Tribunal that the Albanian authorities were taking effective steps to deal with blood feuds.
17. Before this Tribunal, Ms Fisher relied upon the Court of Appeal judgments in *Koci* [2003] EWCA Civ 1507, in which the Tribunal's determination was overturned.

18. The Court of Appeal's basic criticism of the Tribunal in *Koci* was that it had failed to take proper account of the individual circumstances of the appellant, in determining risk on return. At paragraph 31 of the judgments Keene LJ set out the account given by Mr Koci:

'The unchallenged evidence was that his father had killed two members of the Shtefni family as recently as August 2001. This, therefore, was not ancient history. Moreover, it had happened, as Mr Gill emphasises, in public, so that the killing of the members of the Shtefni family was obvious to a number of others. When the appellant's father emerged from hiding in September that year he was shot and killed. When the appellant emerged from hiding in the capital, Tirana, he was immediately shot at. These facts give this case particular force, and yet there is no reference to them in the IAT's decision and no attempt to consider whether, even if the Tribunal were right about the general situation as to effective protection from blood feuds, this appellant fell within that general situation.'

19. Paragraph 35 is worth quoting in full:

'35. I do emphasise that every case has to be considered on its merits. I do not for one moment suggest that every Albanian who reaches these shores and has been involved at some stage in a blood feud, however remotely or indirectly, is automatically to be regarded as someone who cannot be removed without breaching his Article 2 or Article 3 rights. The outcome, as always, would depend on the details of his case and on the evidence about conditions in Albania at that time. I am dealing in this judgment only with the instant case. However, in this instant case I conclude that the IAT was wrong to interfere with the findings made by an Adjudicator. He was not plainly wrong in the conclusions reached. Having arrived, as I do, at that conclusion, it is unnecessary to deal with the various other arguments canvassed on behalf of the appellant in writing. I, for my part, would allow this appeal.'

20. Longmore LJ concurred:

'37. Mr Eicke for the Secretary of State submitted that if this appeal were to be allowed, asylum would have to be granted to all applicants who plausibly claimed that they were the subject of a blood feud. I cannot accept that submission. The facts of cases in which a blood feud is asserted will all be different. It is for the Adjudicator in each case to decide whether the state can afford sufficiency of protection in all the individual circumstances of the case before him. Important circumstances might include, for example, the notoriety or the publicity of the original killings, the time which has elapsed since the last killing, what the applicant did during that time, and the number of those who have been killed on either of the sides which constitute a blood feud.'

21. In the present case, despite the Adjudicator's references to the Tribunal determination in *Koci*, it is apparent that the Adjudicator has adopted a case-specific approach to the blood feud issue. In particular, he has analysed the evidence before him in order to determine whether it showed, to the requisite standard of proof, that a blood feud in the commonly accepted sense of the term in Albania, had arisen between the respective families.
22. In our view, the Adjudicator has not erred in law in concluding that question in the negative.
23. It is necessary to bear in mind that the road traffic accident which, according to the appellant, led to the institution of a blood feud, is a highly unusual way for such a feud to begin. As we have already noted, most blood feuds arise as a result of a killing committed over land and water rights, mainly in the rural north of Albania. At page 12 of the appellant's bundle, in the report of Antonia Young of the University of Bradford, we find that:

'Whereas in the past a few could begin by discourtesy and shepherds leading herds past one another on pathways, today's equivalent can be found in the chaotic traffic situations of Albania's towns. Furthermore, currently bloodfeuds do not follow strict patterns, each case is different, and directed by the party to whom "blood is owing".'

24. Later on that page, Ms Ward refers to the 'absurdly congested' roads and the poor traffic regulations that exist on them.
25. Be that as it may, if there were any significant instances of blood feuds arising in the capital city of Albania, Tirana, following vehicular accidents of a kind with which we are here concerned, the Tribunal considers that there would be specific objective evidence of these. Ms Fisher was unable to draw our attention to any such evidence.
26. Against this background, the Tribunal can see no reason why it should overturn the Adjudicator's finding that, on the specific evidence before him, he was not satisfied that a blood feud had arisen. What the (no doubt) distraught family of the deceased motorcyclist might have said at the hospital, upon learning the news of his death, and immediately thereafter to the neighbour in no way compelled the Adjudicator to the conclusion that a blood feud had been set in motion. The incident described by the appellant as occurring on 10 January 2003 has, as the Adjudicator observed, certain peculiar features. The appellant's claimed perception of the incident was not one that the Adjudicator had to accept. At paragraph 6.5 of the determination the Adjudicator has noted that a likely explanation was that the appellant was on that occasion experiencing another of the abusive encounters described in his own statement as arising from the fact that he lived in an area of Tirana that was predominantly of a different religion from that of him and his family.
27. It is submitted that the calling of the appellant's first name is an indication that those involved were threatening the appellant as part of a blood feud. There is, however, no evidence before the Tribunal that this is so. Furthermore, as the appellant had himself acknowledged, his family were known in their predominantly Muslim area to be Catholics.
28. By the same token, the Adjudicator was entitled at paragraph 6.6 of the determination to conclude that the incident on 18 January, when the appellant's wife 'noticed a car parked outside the home with some men in it' was not evidence that a blood feud was being directed against the appellant.
29. Two further matters serve to reinforce the Adjudicator's conclusions on this issue. First, the person who actually collided with the motorcyclist was not, of course the appellant himself but his brother. According to the evidence, the brother left home the same day that the motorcyclist had died in hospital, without saying where he was going, following which no-one has heard anything from him. There is no evidence whatsoever to suggest that this brother has left Albania. Given that the

family of the appellant, who remain living in Tirana, have not been informed that this brother has been killed, it is reasonable to infer that the family of the motorcyclist lacked the means or inclination (or both) to hunt down the person who was responsible for the death of the motorcyclist. Furthermore, the appellant's father, who was aged sixty in 2003, remains living in Tirana and there is no indication that he has gone into hiding. Given that blood feuds involve the killing of adult males, the fact that there is no evidence to show there has been any adverse interest in the father is significant.

30. Miss Fisher sought to counter this point by drawing our attention to an article on blood feuds, to be found at pages 38 and 39 of the appellant's bundle. Here it is stated that there are strict rules in the Kanun as to how revenge is to be carried out and that there is a prohibition on the 'the retribution killing of women, children and the elderly'. There is, however, no evidence to show that a man of sixty would, even by Albanian standards, be regarded as so elderly as to be exempted from a blood feud attack.
31. Another reason which caused the Adjudicator to find that a blood feud was not in operation in the present case was that the appellant's family had made no attempt 'to approach one of the several agencies which provide reconciliation services to families involved in blood feuds, despite the fact that Albanian officials appear to have recognised problems posed by the Kanun and have pledged to address them' (paragraph 6.7).
32. The appellant's response to this is that, having got nowhere by using the neighbour as an intermediary, the appellant's family could see no point in taking the matter to one of the relevant agencies. That response, however, does not mean that the Adjudicator was wrong as a matter of law to reach the conclusion he did. Paragraph 6.153 of the April 2004 CIPU Report has this to say:

'6.153 In addition to the work of the government, several agencies provided reconciliation to families involved in blood feuds, although according to the International Crisis Group there has been no concerted and coordinated strategy devised to compound this growing and deeply damaging phenomena. The Association for Fraternisation and Reconciliation aims to settle disputes between families through dialogue. The Albanian Peace Union, formerly the Albanian Reconciliation Mission was founded in 1991. It claims over a thousand members and to have

resolved three thousand feuds in the last ten years.'

33. It is plainly one thing to use the services of an unqualified neighbour and quite another to engage an organisation with particular expertise in reconciling families involved in blood feuds. That the appellant chose not to avail himself of the services of such an organisation but, rather, to arrange more or less instantaneously to leave Albania for the United Kingdom, was plainly a matter that entitled the Adjudicator to conclude that, in reality, a blood feud was not in being.
34. What, though, if both the Adjudicator and ourselves are wrong and a blood feud between the families did arise following the death of the motorcyclist? The Adjudicator deals with this alternative at paragraphs 6.10 to 6.14 of the determination. The grounds of appeal contend that the Adjudicator should, in effect, have followed the Tribunal in *Brozi* [2003] UKIAT 06978 where the Tribunal found that 'The Albanian government does not have in place a system which offers sufficiency of protection. There is no reasonable willingness by the police to detect, prosecute and punish those responsible for blood feuds'. (paragraph 14 of the determination). The Adjudicator in the present case is criticised for following the Tribunal determination in *Koci*, where it was found that the authorities were taking effective steps to deal with blood feuds.
35. In the light of the Court of Appeal judgment in *Koci*, the blanket 'negative' assessment in *Brozi* on the issue of the state protection in Albanian blood feuds must be seen to be as wrong as was the blanket 'positive' assessment in *Koci* at Tribunal level. As the Court of Appeal emphasises 'Every case has to be considered on its merits'. Merely because a finding of fact has been made that a blood feud exists, it cannot automatically be assumed that the appellant will be at real risk if returned to Albania.
36. Building upon Longmore LJ's suggested list of important circumstances, the Tribunal finds that the following matters will be relevant in determining the nature of the risk on return:
 - (a) whether the dispute can be characterised as a 'blood feud' at all;
 - (b) even if it can, the extent to which its origins and development (if any) are to be regarded by Albanian society as falling within the classic principles of the Kanun;
 - (c) the history of the feud, including the notoriety of the original killings and numbers killed;

- (d) the past and likely future attitude of the police and other authorities towards the feud;
- (e) the degree of commitment shown by the opposing family towards prosecuting the feud;
- (f) the time that has elapsed since the last killing;
- (g) the ability of the opposing family to locate the alleged potential victim anywhere in Albania;
- (h) that person's profile as a potential target for the blood feud; and
- (i) the prospects for eliminating the feud, whether by recourse to the payment of money, a reconciliation organisation or otherwise.

37. In the present case, it is manifest that if (contrary to our conclusions) the appellant is the subject of a blood feud, it is one of an unusual kind. The more one moves away from the paradigm situation, the more difficult it will become for a person to rely upon so much of the current objective evidence as indicates an inability or unwillingness on the part of the police and other authorities to take effective action to protect the possible victim. Against this background, the Adjudicator was, the Tribunal finds, entitled at paragraph 6.11 of his determination to find that:

'6.11 Despite the views expressed in the expert's report that 'it is highly likely that the police would choose not to follow up on a case where the accidental death had not been reported' this did not mean that they would not take action on a complaint of an attempted shooting of the appellant in the circumstances described in his claim.'

38. Furthermore, the fact that the motorcyclist's family did not even seek to get the police to take action against the appellant's brother in connection with the accident is a further indication that their outburst at the hospital did not translate itself into a vendetta against the appellant's family.

39. For the Secretary of State, Miss Hart relied upon certain paragraphs in the April 2004 CIPU Assessment, which do not appear to have been available to the Court of Appeal in *Koci* :

'6.150 Following criticism from the European Union (EU) that failure to adequately address the problem of blood feuds might pose a barrier to further EU integration [t]he Albanian government held a round table conference in June 2003 to focus on an action plan to deal with ancient phenomenon [sic]. The government's moves are strongly backed by Albanian President Alfred Moisiu, who told the meeting he was totally committed to reducing blood feuds. In President Moisiu's address to the Albanian Assembly on 5 October, he said that the 'growing tendency towards family crime and the increased number of victims in the name of the Kanun is a blow to the state'. It was reported that during 2002 the Ombudsman's Office also contributed to resolving a number of highly controversial cases involving blood feuds.

6.151 Following a Presidential decree, Albania's Serious Crime Court was inaugurated on 1 January this year. The Court provides a parallel structure to the ordinary court system and will specifically deal with criminal offences carrying a minimum sentence of 10 years. On 7 January President Moisiu appointed 12 prosecutors who will target what are considered to be more serious crimes, including organised crime, human and drug trafficking and blood feuds. According to US State Department Report on Human Rights Practices in 2003 (US SDI 2003) 'Blood feud cases were adjudicated in a Special Crimes Court. Blood killings are distinguished from homicide cases and carry a sentence of no less than 25 years' imprisonment; in comparison, homicide carries a sentence of 15-25 years. Although blood feud prosecution rates were not available, estimates indicated that 60-65% of all cases were brought to court and nearly all of them ended up at appellate level.

'6.152 In March 2004, the government chaired a round table conference in Shkoder with the aim of reducing the impact of blood feuds in the worst afflicted part of the country. Representatives

attending the conference were from central and local government, regional police, religious leaders, local legal representatives and civic leaders. The Minister for Public Order, Igli Toska, announced the setting up of a special dedicated unit within Shkoder Police Department, charged with the dual aims of preventing blood feuds and introducing institutional reconciliation.'

40. Whilst it is plainly too early to say that any potential victim of a blood feud of the 'classic' type can now look to the authorities for a sufficiency of protection, the willingness of the Albanian authorities to act is growing and this factor will need to be taken into account in any assessment under paragraph 36 above.
41. Despite the targeting of the new initiatives on those parts of Albania where blood feuds are most prevalent, it is reasonable to assume that the government's initiatives are particularly likely to make themselves felt, in terms of institutional attitudes, within Tirana itself. Accordingly, looking at the individual circumstances of this case, the CIPU paragraphs we have quoted are of relevance in assessing the extent to which this particular appellant could expect protection from the authorities. In saying this, we are aware of the evidence given to the Adjudicator, that the appellant's father had reported the incident of 10 January 2003 to the police. Given that, at that time at least, the appellant was saying that he could not recognise those who supposedly followed him, it is not surprising that the police said that there was nothing they could do. It also has to be said that the Adjudicator was sceptical of the appellant's account of his father's discussions with the police, as the former makes plain in paragraph 6.6 of the determination. As we have already noted, the Adjudicator found (paragraph 6.15) that the appellant's overall credibility had been 'seriously undermined' by his totally incredible account of his experiences once he reached the United Kingdom. That specific finding was the subject of one of the grounds of appeal to the Tribunal but was specifically (and in our view rightly) excluded when permission to appeal was granted.
42. At paragraph 6.14 the Adjudicator found that 'If [the appellant] returned to Tirana or indeed other parts of Albania, there is little likelihood that the family of the deceased motorcyclist would know that he had returned and there is very little possibility, if any, that he would be pursued even if the alleged blood feud had existed. His father, wife and child still lived in Tirana despite the appellant's claim

that Albania was only a small country and there is no escape when a blood feud has been activated’.

43. Again, on the facts of this case, the Adjudicator was fully entitled to that conclusion. As we have already noted, there is no evidence to show that the brother who collided with the motorcyclist has left Albania or suffered any kind of violence there. Nor is there any evidence that the appellant's father is regarded by the motorcyclist's family as too feeble to be worth killing. Accordingly, his continued presence in Tirana is a strong indicator that the appellant himself would be equally safe there. At page 14 of the appellant's bundle, we note that Antonia Young considered that the appellant ‘could not get far away, since Albania is a very small country, about the size of Wales, with a population of just over three million’. However, in the circumstances of this case, it is big enough, given the absence of any evidence to show that the motorcyclist's family have the means or inclination to pursue the father or brother. Contrast, in this respect, the factual situation in *Koci* where ‘the appellant is a man whose father has already been killed, probably in a blood feud, who has himself been shot at when he came out of hiding in another part of the country, and where the Adjudicator appears to have accepted the Shtefni family would seek to track him down and kill him’ (paragraph 18).
44. In conclusion, approaching the case upon a fact-specific basis, and having regard to the considerations we have set out in paragraph 36 above, the Tribunal finds that the Adjudicator was not wrong in law to conclude that the appellant would not be at real risk of treatment contrary to Article 3 of the ECHR, were he to be returned to Albania.
45. This appeal is accordingly dismissed.

P.R. LANE
VICE PRESIDENT