

JH  
Heard at Field House  
On 27 November 2002

APPEAL NO CC02801-2002  
MH (Safe Route-Presevo Valley  
via Belgrade) Serbia CG [2002]  
UKIAT 06398

## IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....04.02.2003...

**Before:**

**Mr A R Mackey (Chairman)**  
**Mrs L H S Verity**  
**Mr P Rogers, JP**

**Between**

**Meritan Hasani**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

### Representation

For the appellant: Mr P Anim-Addo of Counsel  
Representing Develmi & Co, Solicitors  
For the respondent: Mr J McGirr, Home Office Presenting Officer

### **DETERMINATION AND REASONS**

1. The appellant, who is a citizen of the Federal Republic of Yugoslavia (FRY) and is of ethnic Albanian background, has just turned 18-years of age and comes from the Presevo Valley district which is in the province of Serbia but close to the border with Kosovo. At the outset Mr McGirr made available to us the Home Office Country Information and Policy Unit (CIPU) Country Assessment Bulletin for April 2002 for FRY and also Bulletin 1/2002 for FRY and also Bulletin 1/2002, dated 16 September 2002 also from CIPU "Returns to Serbia and Montenegro (excluding Kosovo)", a bulletin that replaces Bulletin 1/2001 which has now been withdrawn.
2. The Vice President, Mr Fox, in granting leave to appeal in this matter stated:

“The applicant comes from the Presevo Valley and the Tribunal is of the view that the grounds of appeal are arguable particularly in relation to the question of the safety of return via Baghdad and the respondent must be prepared to address this issue at the hearing.”

3. It is apparent that Mr Fox spelt out this issue in the grant of leave, indeed in a further hearing that immediately followed this matter Beti (HX/13117/2002) the same issue of the safety of return via Baghdad and through Serbia to the Presevo Valley was also considered. The reason for this was that over the past 18 months or more several decisions of the Tribunal have addressed the issue of the safety of return to the Presevo Valley by Albanian Serbs. These included determinations such as Gjemali (01/TH/2883) heard on 9 October 2001, Osmani [2002] UKIAT00136 (heard 2 January 2002), Motoshi [2002] UKIAT01175 (heard on 14 March 2002, Rexhepi [2002] UKIAT02460 (heard on 1 May 2002) and Gashi [2002] UKIAT03850, heard on 9 August 2002. All these determinations considered the issue of safety of return to the Presevo Valley by ethnic Albanians. In all of these no in-depth consideration was given to the safety of the actual route that would be taken by such returnees, if they are declined asylum or that there would be no breach of the ECHR. The respondent has advised that the return route would be to Belgrade and then across Serbia to the Presevo Valley. The issue therefore which needed consideration and is undertaken in these two determinations is not only is there a risk to these appellants in returning them to the Presevo Valley but also would they be at risk to the extent that their claims would be well-founded when they are returned to Belgrade and then make their way across Serbia to the Presevo Valley. The *prima facie* concern in addressing this issue is of course that in the Presevo Valley ethnic Albanians are in the majority (see CIPU report April 2002 at 5.50) whereas in the rest of Serbia they are very much in the minority.
4. Both parties agreed that these were the principal issues and concentrated their submissions in that area.
5. Mr Anim-Addo submitted that we should regard carefully the letter from the UNHCR, London, dated 5 September 2002 which forms part of Bulletin 1/2002 CIPU. It is useful to set this out in full. It states:

“With regards to returns via Belgrade, our branch office in Belgrade have informed us that individuals from Presevo being returned through Belgrade should not face any undue hardships. This is provided that the persons concerned have the necessary travel documents and adequate arrangements are made for their safe travel to their place of origin.

On the security situation, reports indicate that over recent months there has been a cessation of open conflict, and that

only few reports of serious violations by security forces in southern Serbia.

It is however to be borne in mind that the area is still characterised by tensions between the ethnic Albanian community and the large Serb police and military presence. The UN Inter-Agency Report and Recommendations on the Situation in Southern Serbia, FRY, January 2002, provides an overview *inter alia* of the security situation in Southern Serbia. This report can be found at [www.undp.aug.yu/files/reports/un-reports-ss-200201.pdf](http://www.undp.aug.yu/files/reports/un-reports-ss-200201.pdf).

Given the prevailing inter-ethnic situation, UNHCR recommends that returns to the Presevo via Belgrade should be implemented with caution.”

It is signed by the Deputy Representative in London.

6. Mr Anim-Addo stressed that this appellant had just turned 18, he had lost contact with his mother and his father was dead, thus the caution advised in the UNHCR letter should be very much applicable in this appellant's case. He was a young ethnic Albanian and because of this and the contents of the UNHCR letter it could be seen that there was a real risk of a breach of Article 3 of the ECHR should this appellant be returned to the Presevo Valley via Belgrade. He also submitted that the comments of the UNHCR that the area was still characterised by ethnic tensions should be noted.
7. Mr McGirr reminded us that the appeal before us was on human rights grounds only. He submitted that the issue of sufficiency of protection for this appellant on return to the Presevo Valley had been correctly assessed along the lines of previous Tribunal determinations. He also noted that human rights issues had not been presented as part of the appellant's case before the respondent or the Adjudicator which meant that only Article 3 ECHR issues could be considered at this time. In this regard he submitted that the Adjudicator had correctly applied the “starred” determination of the Tribunal in Kacaj in the final section of her determination.
8. In relation to the safety of return via Belgrade he firstly asked us to note the objective evidence set out in the CIPU report at 5.48, 5.49 and 5.50 which indicates that there are some 70,000 ethnic Albanians living as a majority in the Presevo Valley. Thus there was, in his submission, considerable safety assured to ethnic Albanians in that area merely through their majority. He also asked us to note that some 5,000 Albanian Serbs lived in Belgrade and there was no evidence or indication that they were at any risk because of their ethnic background. We were also referred to the letter from the Foreign & Commonwealth Office (FCO) dated 3 September 2002 (Eastern Adriatic Department) states that:

“Neither the FCO nor British Embassy in Belgrade have seen any evidence to suggest that ethnic Albanians in Serbia are unfairly discriminated against or persecuted, either by authorities or local Serbs, to the extent that travel to the Presevo Valley from elsewhere in Serbia is made unduly difficult or rendered impossible.

The current FCO assessment is that the situation in Southern Serbia (Presevo Valley) has been transformed beyond recognition in recent months. Following local elections in July and August, the Presevo Valley now has a political framework for integrating the ethnic Albanian community (and other local minorities) into local democratic structures, as foreseen under the Serbian Government “Covic Plan” launched in 2001. Ethnic Albanians now have their own elected representatives who are working closely with the Serbian Government and international organisations such as the OSCE to restore long-term peace, stability and economic progress to the area. More generally during the past year, both the FRY and Serbian Governments have made progress in establishing a basis for improving inter-ethnic relations throughout Serbia. The passage of the Federal Law on Ethnic Minorities earlier this year was widely praised by the international community as an example to the region.”

9. He submitted therefore that this indicated there was no significant risk and that the recent changes proved a sufficiency of protection would be available for persons such as the appellant on being returned. He also noted that the UNHCR letter of 5 September 2002 indicated there were no undue hardships in returning appellants via Belgrade although of course it must be undertaken with caution. In this regard he submitted that there was no evidence to say that the respondent would not be cautious in the procedures and methods used for return.
10. Finally we were asked to note the Bulletin itself at paragraph 4 – “Documentation”, which states that for individuals without valid national passport/travel document the FRY will accept applications lodged on behalf of the United Kingdom Immigration Service by the Immigration Service Documentation Unit. In order to obtain issue of a travel document the FRY authorities will require some original supporting documentation such as an expired passport, identity card or driving licence. For applications made without supporting documentary evidence the FRY authorities can verify identity and nationality by referring back to official records held in Serbia. This requires the applicant’s full name, place of birth, date of birth, address and photograph. The process takes 2 – 8 weeks to complete.
11. In summary therefore he submitted that ethnic Albanians were not being mistreated in Serbia and that there was no risk to this appellant on return, thus the appeal should be dismissed.

Decision

12. After careful consideration of the determination of the Adjudicator and the submissions presented before us by both parties we conclude that the appeal must be dismissed. Firstly we consider that there are no substantial grounds for considering that there is a real risk that there would be a breach of Article 3 of the ECHR should this appellant be returned to the Presevo Valley. The objective Country Information set out not only in the CIPU report but now in the additional reports and letters from the FCO and UNHCR quote the security situation is vastly improved and continuing to improve with only a few reports of serious violations taking place. We have also noted the improving situation for ethnic Albanians in the rest of Serbia which is clearly indicated from the objective information also. The UNHCR letter of 5 September 2002 which it is self-evident, must be treated as more objective than the FCO information, itself states that individuals returned through Belgrade should not face undue hardships provided they have the necessary travel documentation. Part 4 of Bulletin 1/2002 (CIPU) indicates to us that there should not be any substantive difficulty in obtaining appropriate documentation for this appellant. Thus while we would not conclude that there is no risk to this appellant, we are satisfied that the level of any risk will be remote or speculative and well below that of a real risk. The conditions that may have led to a heightened risk have been improving, particularly since 2001. Accordingly there are now clearly changed conditions from those that were in existence one or two year's back. Our assessment of course is made on the prospective risks to this appellant on return to Presevo Valley via Belgrade in Serbia at this time.
13. The appeal is accordingly dismissed.

**A R Mackey  
Vice President**