

Heard at Field House
On 2 June 2004
Written 3 June 2004

BK (Blood Feud) Serbia and Montenegro CG [2004] UKIAT 00156

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

..... 10/06/2004

Before

Mr K Drabu (Vice-President)
Mr S L Batiste (Vice-President)
Mr R Hamilton

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Respondent

For the Appellant: Mr J Gulvin, Presenting Officer.
For the Respondent: Mr S Baker, instructed by Chartwell & Sadlers

DETERMINATION AND REASONS

1. The Respondent is a citizen of Serbia & Montenegro (Kosovo). The Appellant appeals, with permission, against the determination of an Adjudicator, Mr C C Wright, allowing the Respondent's appeal against the decision of the Appellant on 24 July 2003 to issue removal directions and refuse asylum
2. The Respondent's claim can be summarised as follows. He is an ethnic Albanian from Pristina who fled from Kosovo on 15 May 1998 to the UK to escape the adverse attention of the Serbian authorities. However his current fear of return is based upon a telephone conversation between him and his father in Kosovo, some three weeks after UNMIK and KFOR entered Kosovo in June 1999. His father told him that he and other family members were leaving Kosovo because of a threat to the life of the Respondent's grandfather and other members of his family by the Kacanik family of Gjakova. This arose from a blood feud going back some fifty years, when the Respondent's grandfather apparently killed a member of the Kacanik family. The Respondent has not heard from his father again but believes he went to America and remains there now.

3. The Adjudicator accepted that the claimant was a credible witness and this included his account of the telephone call from his father. The Respondent had not mentioned this matter until his interview in 2003 because it was not uppermost in his mind when he completed the papers for the original asylum claim. The Adjudicator thus accepted that the Respondent was the subject of a blood feud. He allowed the appeal in respect of asylum and under Articles 2 and 3 because he held that the authorities in Kosovo would be unable to offer him a sufficiency of protection. In so concluding, he said that he preferred the expert report of Mr Standish to the objective evidence recorded in the CIPU document submitted to him. He offered extensive quotations from both, but did not say why he preferred Mr Standish's report.
4. The grounds upon which permission to appeal was granted raise four matters. First, the Adjudicator erred in his conclusion that there would be no sufficiency of protection available from the authorities to the Respondent arising from a blood feud. Second, the evidence accepted of a single phone call in 1999, without any further indication that the blood feud was being pursued was insufficient to establish any real risk for the Respondent on return today. Third, there was insufficient reasoning as to why the Kacanik family would five years later attempt to find the Respondent, or would even be aware of his return. The Adjudicator was therefore in error in concluding that the claimant could not live in Pristina or could not seek internal relocation elsewhere in Kosovo. Finally the Adjudicator erred in allowing the appeal under Article 2 as the evidence did not show that there was "a near certainty of loss of life," this being the threshold described by the ECHR in *Bahaddar v Netherlands*.
5. To a considerable extent these issues overlapped in the way that they were argued before us and depend upon the sustainability of the Adjudicator's assessment of Mr Standish's report particularly as to the availability of sufficiency of protection within the terms described in *Horvath*. Before turning to that report however, we have had regard to the Tribunal's latest country guidance on blood feuds in Kosovo, in **KS (IFA – Albanian blood feud) Kosovo CG [2003] UKIAT 00208**. This was promulgated on 5 November 2003, the same date as the Adjudicator determined the appeal before us. It was not therefore produced to him. We must acknowledge at once, as Mr Baker submitted, that the Tribunal in *KS Kosovo* did not have a report from Mr Standish before it. It did however have a fair amount of objective evidence concerning blood feuds, including much of the evidence that was before the Adjudicator in this appeal, and some that has been relied upon by Mr Standish. The Tribunal assessed this evidence carefully. The relevant parts state as follows.

"7. At page 78 of the Tribunal bundle, is an extract from *Kosovo: A Short History* by Noel Malcolm. Here, we find the nature of the Northern Albanian blood feud described as follows:-

'[The blood feud] is one of the most archaic features of Northern Albanian society resembling the codes that govern other isolated societies in the Mediterranean region (such as Corsica) or the Northern Caucasus. What lies at the heart of the blood feud is a concept alien to the modern mind, and more easily learned about from the plays of Aeschylus than from the works of modern sociologists: the aim is not punishment of a murderer, but satisfaction of the blood of the person murdered, or initially, satisfaction of one's own honour when it has been polluted. If retribution were the real aim then only those personally responsible for the original crime or insult would be potential targets; but instead honour is cleansed by killing any male member of the

family of the original offender, and the spilt blood of that victim then cries out to its own family for purification.

Since honour is of the essence, there are strict rules for every step of the feud: one who 'takes blood' to satisfy his (or his family's) honour must announce that he has done so; a formal truce or best for a set period must be agreed to, if requested for a proper reason (this is a special use of 'bese' the general term for a man's word of honour); and so on...the tradition of the blood feud has never died out in Kosovo: innumerable small-scale feuds have combined in the remoter villages and not all of them were ended by the great series of mass reconciliations arranged by an inspirational settler of blood feuds, Anton Setta in the early 1990s'.

8. In a further extract from a book, *Religion and the Politics of Identity in Kosovo*, by Ger Duijzings found at page 82 of the bundle, we note the following:-

'The judicial means of regulating property and land sales have been ineffective, and thus conflicts over land have been endemic, resulting in a rising number of blood feuds: among the Albanians in Yugoslavia the number of crimes committed in vendettas is not only on the decline but is even rising...there are such feuds in almost every one of the Communes of the province of Kosovo, most of them in the remote villages'.....

10. An extract from the *Sunday Times* of August 2001 mentions the murder of almost the entire membership of a Kosovan Albanian family. This is referred to in the context of the 'lawless state that Kosovo is in', with 245 murders in 2000, 'many of them revenge attacks on the Serbian minority by ethnic Albanians, angered by years of repression'. In 2001, up to the date of the article, 'the number of murders has dropped to...77, but it includes a particular brutal outrage, eleven Serbs killed in a bus bombing in February'. As for the killing of the Albanian family the report notes that 'Albanian feuds spare women and children' and that the killing 'is almost certainly linked to the fact that Hamza, Pranvera's 50 year old father used to be a policeman under Serbian rule'.

11. On page 87 we find an UNMIK-KFOR press briefing of February 2001 where 'two murders were reported overnight, one in Malishevo - a Kosovo Albanian killed another in an apparent blood feud dating 25 years'.

12. Ms Jolly also submitted a copy from a website article of 21 August 2003, emanating from an organisation called 'Reliefweb'. The subtitle of the article is 'Murders on the increase in Western Kosovo but no-one is prepared to identify the killers'. The particular incident in question, when a number of people were shot in a gun attack on a car and shop, appears to have 'had something to do with rival business interests'. There are said to have been 22 murders in the Peja region of Kosovo during 1993. The causes of the crimes 'vary - some of the killings involve organised crime and business rivalries, while others stem from traditional blood feuds between Albanian families'. The article goes on to note that 'ethnic violence involving Albanians and the pockets of Serbs still living in the area remains a disturbing trend. Two young Serbs...were shot dead on 13 August'. UNMIK police are quoted as complaining that witnesses to crimes such as these are hard to come by. Another report from the same website of 19 August 2003 notes 'escalating violence in Kosovo [which] has led to a new war of words between Serbian and Albanian politicians and raised tension between their respective communities'.

13. Against this background, the Tribunal is in no doubt that the Adjudicator was perfectly entitled to conclude that the Appellant would not be at real risk upon return to Kosovo as a result of his uncle's murder of the brother of the Serbian informer and Collaborator Palok Gjeloshi.

14. Reading the documentation in the Appellant's bundle, and the Kosovo Country Assessment of April 2003, it is manifest that the situation in Kosovo has changed fundamentally since the time of the events in 1999, when the Serbian authorities held sway in the province. According to paragraph 4.48 of the Assessment, it appears that less than half of the former 200,000 or so Serbs who were resident in Kosovo, now remain there. Most of the remaining Serbs 'are concentrated in the Northern part of the city of Mitrovica'. Ethnic Serbs 'have been the principal targets for ethnically motivated attacks'.

15. The Tribunal is also aware that UNHCR consider that potential returnees, with special protection needs, include ethnic Albanians who may have been involved with the previous Serb administration. As paragraph 6.91 of the Assessment observes 'there have been reports of ethnic Albanians being targets of harassment and violence in retribution with alleged association or collaboration with the Serbian regime, particularly in the months following the war of 1999-2000. In some cases such accusations may have been based on little more than the fact that the person had done business with the Serbs in the past or that his house was not targeted by Serb forces'.

16. The Tribunal's attention has not been drawn to any utterance by the UNHCR, since the end of the Kosovan war, to the effect that those in need of special protection include those who claim to fear retribution from a blood feud.....

18. The evidence on blood feuds in Kosovo clearly suggests that the practice exists within the more rural, isolated communities. The Tribunal has been presented with no evidence to show any significant blood feuding within the capital, Pristina, The Adjudicator's finding that, if it were necessary to do so, the Appellant could relocate there with his family is, in the Tribunal's view, wholly justified."

6. Much of what the Tribunal said in KS Kosovo about the background and practice of blood feuds is reflected also in Mr Standish's report and comes from similar sources. There are however some material differences. The Tribunal did not deal with the question of sufficiency of protection, because it concluded there was no real risk as the problem related mainly to rural areas and there was an internal relocation option to Pristina, where "there was no evidence of any significant blood feuding." Mr Standish rejected the availability of any sufficiency of protection for the targets of blood feuds and concluded that there was no viable internal relocation option anywhere in Kosovo. It is these differences that are of central concern in the appeal before us.
7. Mr Standish has set out his credentials. He is a Fellow of the Royal Institution and of the Royal Anthropological Institute. He is a tutor at Durham University and is chairman of the board at the Centre for Research into Post Communist Economies. He is evidently a man whose opinions must be assessed seriously.
8. His overall conclusions are contained in paragraphs 52-57 of his report, the relevant passages of which can be summarised as follows.

If the Adjudicator were to make a positive finding on credibility then in my view it would be appropriate to consider the cultural background to the practice of blood feud in Kosovo. My opinion is that, unless such a blood feud were to be settled by negotiation between the elders of both respective families and a “bese declaration” made, then there is a genuine and substantial risk to the male members of such families, and an indirect - though no less serious - risk to the male members. Indeed in recent years instances of blood feuds being pursued abroad have been documented by police in Italy, Greece, Switzerland, Germany and the UK.

As far as the question of sufficiency of protection is concerned I would commend to the Adjudicator's attention the specific concerns over the standard of policing raised by UNMIK's human rights Ombudsman in his 2002 Report on Kosovo as well as the findings of the most recent Council of Europe report. In my view the evidence contained in the 2001 US State Department report also gives cause for concern that UNMIK may tolerate informal settlement of blood feud violence, rather than taking active steps to bring those responsible for the courts. On the evidence of what is taken place in Kosovo since June 1999 and is continuing to occur in the province, I do not have confidence that the Kosovo police service can be relied upon to of a meaningful degree of protection or security to those individuals at risk from blood feuds. UNMIK's own evidence is that such attacks do occur - often many years after the initial incident - and on occasion individuals are killed or seriously injured.

Since blood feuds are province wide problems and cases have been documented across Kosovo, I do not consider that internal relocation could offer any additional degree of security, particularly in view of the small size of both population of Kosovo and the geographical boundaries of the province itself.”

9. Pausing at this point, we can see no objection to Mr Standish's conclusion that if the credibility of a claim of a blood feud is accepted, then the claim must be viewed in the context of the cultural background to the practice of the blood feud. In this appeal the Adjudicator accepted that the telephone call of 1999 was credible even though the issue of the blood feud was not raised with the Respondent for a further four years. However, as Mr Baker confirmed, there is no further evidence beyond that telephone call concerning whether any action was taken after the call in pursuance of the blood feud. Indeed there is very little evidence about what the blood feud itself was originally about and whether anything much happened in pursuance of it over the previous fifty years. These are important matters in terms of risk assessment that the Adjudicator did not explore. Mr Baker suggested that blood feuds were suppressed by the previous Yugoslav government, and that is why there is no such evidence. That does not seem to accord with the history by Mr Malcolm described above. A more consistent view is that it may have been because the feud was resolved in the mass reconciliations of the early 1990s. However, as we have said the Adjudicator did not explore this matter further and in the absence of any challenge by Mr Gulvin to the Adjudicator's assessment of credibility, we have accepted the Adjudicator's finding at face value - that some threat was made and in the cultural context will not expire with time. Whether the evidence is sufficient to demonstrate a real risk within the terms of persecution and Article 3 is a matter that we shall return to later.

10. Mr Standish bases the conclusions concerning sufficiency of protection that we have quoted above on some earlier passages in his report as follows.

33. The issue which would then follow is whether the present authorities in Kosovo (UNMIK, KFOR and the Kosovo police service) are capable of providing adequate protection to those ethnic Albanians who are "in blood" with another family in the province. In my opinion the current security situation remains far from satisfactory although there has been an undeniable improvement in the general level of security for most ethnic Albanians. However there has also been a significant number of killings and kidnappings committed by members of both communities - Albanian and Serb - in Kosovo since June 1999 and recent evidence provided by objective sources (including UNMIK itself) is that there has been a significant upsurge of violence within the ethnic Albanian community.

34. There is also disturbing evidence cited by the US State Department in its Human Rights report on Yugoslavia (Kosovo) for 2000 that UNMIK has, at least on occasion, failed to enforce the law, preferring to allow the process of informal blood mediation to take the place of prosecutions

“In early December unknown assailants attempted to kill Hajvas Berisha, a former commander of the KLA and a KPS member in Pristina. UNMIK arrested three of the alleged assailants; however, because the case involves a family feud, no charges were filed against the assailants because the case was settled out of court through traditional Albanian feud mediation methods.

35. In my view this statement raises legitimate questions about the extent which UNMIK and its police effectively collude in such informal out-of-court settlements in order to avoid provoking tension between the ethnic Albanian majority population and UNMIK police, an increasingly large number of whom are ethnic Albanian recruits. Intervention in blood feuds by other ethnic Albanians - even police officers - tends to be avoided owing to the potential risk to the individuals and their own families.

36. In my opinion this evidence suggests that UNMIK has been, at least in certain cases, willing to allow informal settlement of violence committed in the pursuit of blood feuds in Kosovo rather than taking appropriate steps to enforce the law and bring perpetrators justice in the courts. I would suggest that traditional Albanian feud mediation methods can hardly be regarded as an appropriate means of law enforcement in 21st century Europe [as per the Horvath test].”

11. This is a particularly important part of Mr Standish's report because he bases much of his opinion on sufficiency of protection upon the evidence described in it. The only specific example he cites in support of an unwillingness by the authorities to provide a sufficiency of protection is that of Hajvas Berisha. However we do not consider that this quoted report bears the interpretation he placed upon it. It shows that an attack was made in pursuance of a blood feud. UNMIK responded by arresting three persons in connection with it. That certainly shows a willingness to act by UNMIK. However the fact that no charges were filed does not mean that the UNMIK was unwilling to pursue the matter. It reflects the fact that the parties to the dispute resolved it between themselves and did not wish to pursue it any further and did not file charges. No prosecution can succeed in the absence of evidence. Moreover this event was in the

early days of the UNMIK presence and as we have seen from the material described above, there have been improvements in policing with the passage of time.

12. This issue of willingness of the authorities to act is a matter that is central to the question of sufficiency of protection. We therefore asked Mr Baker whether he could point us to anything in the objective evidence to show that, since the arrival of the international forces, a target of a blood feud has applied to the authorities in Kosovo for protection and had been refused. He fairly acknowledged that he was unable to point us to any specific example of his at any point in their mandate. This is a huge gap in Mr Standish's argument that the Adjudicator did not apparently identify or weigh. Mr Standish appears to have misunderstood the significance of the Berisha incident and there is no other example before us showing any unwillingness by the authorities to act against criminal violence, whether in pursuance of blood feuds or inter ethnic violence. Moreover the Tribunal has assessed the general question of sufficiency of protection in Kosovo since the intervention of the international community in many be of its determinations from Kacaj onwards. It has concluded overwhelmingly that there is in general terms a sufficiency of protection available. There are exceptions relating to the specific categories identified by UNHCR as being in need of international protection, and even then a careful assessment on a case-by-case basis is needed. We note that UNHCR does not identify targets of blood feuds in Kosovo as being amongst those in need of international protection. Despite this, Mr Standish is effectively stating that the general sufficiency of protection available in Kosovo is not available in relation to blood feuds, but offers no specific examples that can properly support his proposition. That is not in our view a sustainable opinion on the evidence available.
13. It is true of course that there has been an upsurge of criminal violence in Kosovo. There are a number of examples of it in the evidence before us. However relatively little of this has an identifiable connection with a blood feud, though some do. Mr Standish seems to incorporate violence generally in Kosovo into his assertions about blood feuds. That is not a sustainable view either. We would have expected a clear and properly sourced attempt to identify how many of the acts of violence can reasonably be attributed to blood feuds. We are aware, from news reports and the objective evidence, of the emergence of organised criminal gangs and the incidence of inter-communal ethnic violence. However this not in pursuance of blood feuds and cannot be conflated with it when assessing the extent of risk in general or in any particular case. The reality as it appears to us from the material available is that attacks in pursuit of blood feuds in Kosovo do happen, but are relatively few in number and mainly relate to the rural areas.
14. Moreover, under the Horvath test, the fact of violence does not mean there is no sufficiency of protection from the authorities. Crime exists in every country including the UK. Indeed Mr Standish identifies the UK as a place where Albanians in pursuit of a blood feud have committed crimes. That does not mean there is no sufficiency of protection here.
15. The authorities in Kosovo face considerable difficulties as do the authorities in many countries faced with rising levels of crime. However the evidence before us demonstrates that there is a system of criminal law, which makes violent attacks by persecutors punishable, and a reasonable willingness to enforce that law on the part of the law enforcement agencies. There are many examples confirming their ability to do so. Reading Mr Standish's report with care and in the context of the evidence as a

whole, he has failed adequately to support his opinion that there is no sufficiency of protection available in Kosovo from the authorities for targets of blood feuds. We therefore conclude that the Adjudicator was wrong on the objective evidence before him to rely upon Mr Standish's report in concluding that there would be no sufficiency of protection available in general or in relation or to the Respondent in particular. It follows from this that the Adjudicator's conclusions, being based upon the absence of sufficiency of protection, are flawed and must be set aside.

16. We should add that even if there is some risk to targets of blood feuds, before they can engage international protection they have to establish a real risk to them. This necessarily engages the reasonable likelihood of their being discovered and attacked. We have already observed that the number of attacks identified with blood feuds is fairly small and mainly occurs in rural areas. Whilst we accept that Kosovo is a relatively small place, that does not mean that there are no internal relocation options available. Indeed the Tribunal has frequently found that such options do exist especially in Pristina, the capital.
17. In this appeal, the only information relating to the blood feud derives from a telephone conversation with the Respondent's father some five years ago. Whilst we accept that there is no time limit to a blood feud, the fact that there is no further evidence about it does not suggest that it has been pursued in the past with any vigour or would be in the future. There is no reason in the evidence why the Kacanik family who live in Gjakova would be aware of the Respondent's return to Pristina. The observation by Mr Standish that the Respondent would have to register and disclose his birth certificate to the authorities is not a viable basis for concluding that a person with a relatively common Albanian name would be identified as a target of blood feud and information would be passed on to the Kacanik family. We conclude therefore that irrespective of the question of sufficiency of protection, the Respondent has plainly failed on the evidence to establish that there would be a real risk to him on return to Pristina. This is not question of internal relocation because Pristina is where the Respondent came originally. Again the Adjudicator erred in relying on Mr Standish's inadequately reasoned and sourced contrary opinion.
18. For the reasons described above, we conclude that the Adjudicator's unexplained preference for Mr Standish's report over the other objective evidence, in respect of the issues of sufficiency of protection, real risk and internal relocation, is unsustainable on the evidence. His allowing of the appeal in respect of asylum and Article 3 must be set aside. We would add that the very high threshold required to engage Article 2 is that of the near certainty of loss of life, and the evidence in this appeal does not remotely support such a level of risk. Accordingly the allowing of the appeal under Article 2 also must be set aside.
19. This appeal is allowed. The Adjudicator's conclusions are set aside. The Appellant's original decision is upheld.

Spencer Batiste
Vice-President