

IN THE IMMIGRATION APPEAL TRIBUNAL

**Decision no. GL (IFA-Albania/Roman-Catholic) Serbia & Montenegro CG
[2003] UKIAT 06984**

Appeal no. CC 02832-2001

Heard: 14.01.2003
Typed: 14.01.2003
Sent out: 03/03/2003

IMMIGRATION AND ASYLUM ACT 1999

Before:

John Freeman (chairman)
and
The Rt Hon the Countess of Mar

Between:

Secretary of State for the Home Department,
appellant

and:

Gzim LUMAJ,
(claimant)

DECISION ON APPEAL

Mr I Graham for the Secretary of State

Mr B Caswell (counsel instructed by Brar & Co, Newcastle) for the claimant

This is an appeal from a decision of an adjudicator (Mr K Gillance), sitting at Leeds on 14 March 2001, allowing an asylum and human rights appeal by a Roman Catholic Albanian citizen of Montenegro. Leave was given on the basis of grounds citing the adjudicator's failure to consider internal flight.

2. That had not been raised in terms by the presenting officer before the adjudicator; but, as Mr Caswell had to concede, the question is very obviously raised by the adjudicator's findings at § 30, on the basis of the CIPU report before him and the evidence he had heard about the individual case:

... ethnic Albanians from Montenegro are not generally harassed and have their own political party and will find it difficult to substantiate a claim to asylum on general ethnic grounds. I accept that that may well be the case generally. However in this particular case I find that there was a vulnerable area around Podgorica and the military bases there where ethnic Albanians were seriously harassed and terrified by Serbian troops.

3. Clearly the adjudicator should have considered whether or not it would be unduly harsh to expect the claimant to seek refuge with his family somewhere away from the “*vulnerable area around Podgorica*” where they had been living. We invited Mr Caswell to address us on that. To set the scene, the adjudicator had found, and there is no challenge to this, that between 1999 and 2000 the claimant had suffered from the presence near his village of Serb troops of the Army of Yugoslavia [VJ], the most serious incident being when they tried to kidnap his wife. In addition, he had faced problems with the local Montenegrin police, when he refused to help them by storing arms for them to use against the VJ in case of need. At that time they had had one child, Valmira, born 26 September 1999. All three of them came here in October 2000: another child, Kristjan, was born here on 18 December 2001. Montenegro is a small country, but by no means a micro-state. The CIPU report gives its area as nearly 14,000 km², and its population as about 700,000: there was a map before the adjudicator which shows Podgorica, the capital, towards its south-east corner. The claimant’s village of Shipshanik is 15-20 km south-east of Podgorica, as the adjudicator notes at § 10.
4. Mr Caswell began by referring us to evidence in the current (October 2002) CIPU report about the economic situation in Montenegro. While that refers to 40% unemployment, and an average wage for those in work considered insufficient for a family, leading to half the population being below the “poverty line” (however that may be defined), there is nothing to suggest that represents anything other than problems faced by the claimant’s fellow-citizens in general. Mr Caswell suggested that the claimant was liable to face discrimination as an Albanian; and, within that community as a Roman Catholic; but he was not able to refer us to any background evidence to suggest that persons of either description were seriously disadvantaged in seeking employment. The adjudicator explicitly found against the claimant (at § 22) on any suggestion of religious persecution. Though the CIPU report at § 6.9 shows the Orthodox Church (in different guises) is the only one recognized by law, there is no suggestion there or anywhere else we have been referred to of even discrimination against Roman Catholics.
5. Mr Caswell went on to point out that the claimant and his family have no friends or relations elsewhere in Montenegro; but he had to concede that they were in the same position when they arrived in this country. Clearly their history shows they are enterprising and self-reliant enough to make out by themselves in a new home, unless the conditions themselves can be described as unduly harsh. A further point, about whether they would be accepted back by the Montenegrin authorities (though one might well expect they would, having lived there all their lives till now) does not arise, because Mr Graham was able to assure us that no-one is returned to Montenegro, unless the authorities there have confirmed they will accept them as returning citizens.
6. Mr Caswell referred us to evidence criticizing the criminal justice process in Montenegro; but, with the exception of one piece of evidence, there is nothing to suggest that this claimant would be brought into any contact with that on return. That evidence comes in a further statement from the claimant, taken from him at Mr Caswell’s suggestion after the present hearing was listed on 13 November 2002, and signed on 16 December, with copies sent to the Tribunal on the 20th. There is nothing in the covering letter, or anywhere else Mr Caswell could refer us to, to show that a copy had also been sent to the Home Office; and Mr Graham did not have one. We agreed to consider the points raised in the statement, so we could

see whether they called for a reply from the Home Office on notice; but solicitors should be well aware that, particularly where they file evidence fairly late in the day, they must be in a position also to show it has been served on the other side.

7. The point on which Mr Caswell relied on the claimant's statement was that he had been in touch with his father, still apparently living in their home village, and been told that the chief of police was still looking for him, and would arrest him if he returned. The claimant also said he was afraid that officer "... could use his power to locate me in other parts of Montenegro, so that we would have to go into hiding." Mr Caswell, without citing any reason why, asked us to accept that statement "at face value".
8. While we of course accept that the statement was obtained as a result of Mr Caswell's (very sensible) advice on evidence, we are at a loss to see any other reason why the chief's continuing interest in this claimant should come to light over two years after he left the area, and just when his case was up for its final hearing. The problem between the claimant and the police had been a local one, arising out of a situation now well in the past (the potential conflict between them and the VJ units stationed nearby). We see no reason why it should still represent a real risk, even in the claimant's home area; and no basis at all for its doing so elsewhere in Montenegro. The CIPU report says at § 5.10 that "... there have been few publicised incidents of abuse": those set out at § 5.14 all date back to 2001.
9. Taking all the points made by Mr Caswell together, in the light of the views we have expressed on each, we do not think it can possibly be said that it would be unduly harsh, in terms of **Robinson [1997] Imm AR 568** and the examples given there, for this claimant to be expected to return to some part of Montenegro other than his home village.

Appeal allowed

John Freeman (chairman)