

**THE HIGH COURT
JUDICIAL REVIEW**

[2009 No. 622 J.R.]

BETWEEN

A. G.

APPLICANT

AND

THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

JUDGMENT of Mr. Justice Mac Eochaidh delivered on 7th day of June, 2013

1. The applicant is an Albanian man born in 1984 who left his home country in March 2007 approximately seven years after his uncle is said to have murdered a young man in connection with a land dispute. The Refugee Appeals Commissioner and the Refugee Appeals Tribunal (the "Tribunal") declined to recommend refugee status for the applicant who now pursues four complaints in respect of the decision of the latter.

2. The first two complaints are linked whereby criticism is made about the manner in which documentary evidence was treated by the Tribunal and the failure of the Tribunal to put certain matters arising from the documents to the applicant at the oral hearing.

3. By way of background, I note that blood feuds are an acknowledged feature of life in Albania. These disputes involve families of murder victims seeking revenge on the families of the perpetrator. The phenomenon is well documented and features strongly in claims made by Albanian nationals for asylum internationally. Efforts by the Albanian government and non-governmental organisations in Albania to counter the phenomenon and achieve reconciliation between warring families is acknowledged in country of origin information.

4. In support of his application for asylum, the applicant submitted four documents to the decision makers:

- (a) birth certificate;
- (b) a certificate from the chairman of Malesi e Madhe District Council;
- (c) a certificate from the Peace Missionaries Union of Albania, District of Malesi e Madhe; and
- (d) a certificate from the Municipality of Koplik.

5. Particular negative findings were made by the Tribunal Member in relation to the certificate of the Peace Missionaries Union of Albania.

6. The translated certificate provides as follows:

"The Peace Missionaries' Union of Albania

Branch of Malesi e Madhe

Republic of Albania

District of Malesi e Madhe

CERTIFICATE

A. G. is an inhabitant of the Municipality Koplik and is resident in the quarter

Kiras of the Shkoder town.

G. family is in conflict with Hoxhaj family since some years ago because of ownership pretensions, but in January 2000, the conflict went worst and it resulted in a armed conflict where M. G. (uncle of A) has murdered with a arm on member of Hoxhaj family."

Because of this conflict and by this moment the males of G. kin have been obliged to be closed and A. too. All this because of the threatening of self condemnation by the family of victim according to the canon laws, closing even the children and leaving them without school and the adults with work. Because of this situation the father of A. N. G. has moved from Malesi e Madhe to Shkoder all his family.

It has been required our aid as an organisation to intervene in this conflict on behalf of G. family but it has been all unavailable because HOXHAI family did not accept the reconciliation and has been expressed that ill revenge according to the canon laws. But our attempts will continue to find any resolution of this conflict. The situation is still the same even after all attempts of State structures has not been possible to secure their lives. We issue this certificate at the instance of interested one.

You can contact with Mr. F. Hasaj

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For the THE PEACE MISSIONARIES UNION OF ALBANIA Branch Malesi e Madhe

Secretary

File Hasaj, Chairman Pashk."[sic]

7. The Tribunal Member assesses the implications of this document as follows:

"The member notes a proposed attestation document from the Peace Missionaries Union of Albania in Koplik dated the 6th June 2007, and considers that, if this is the copy document furnished by the applicant to assist his application and to vouch that he has sought reconciliation in his country of origin, the said documentation is entirely rejected by the member. It is considered that the applicant as an adult was obliged, in his country of origin, if he was having difficulty in Kiras, to which he moved in 2001 with his family, as he has alleged, to seek reconciliation on his own behalf through any of the reconciliation committees or NGO's. The Committee of Nationwide Reconciliation, (CNR), is an, 'NGO that works towards encouraging the rule of law in Albania and discouraging the use of Kanun traditions'. (Refer to Paragraph 3.6.4 Albania OGN, 8th of December, 2008. The said paragraph further goes on to say, *inter alia*, 'an attestation letter is a document that confirms whether a blood feud has occurred. The head of the CNR states that his organisation is the sole authorised provider of attestation letters'.

The applicant in cross-examination evidence could not name the source he obtained the proposed attestation letter from and he referred to the source as being, 'the Peace Commissioners', 'the Committee of Peace', 'the Peace Committee', 'the League of Commissions for Peace', but he did not name the source from which his purported attestation letter came from, and, that is, 'The Missionaries Union of Albania'. He then suggested that all of these groups are the same. Quite clearly, this is not what up to date Country of Origin Information discloses and as aforesaid [sic].

The member also finds it somewhat implausible that he might seek to proffer to this Tribunal a certificate/attestation letter, purportedly from the Peace Missionaries Union of Albania, District Malesi and Madhe, which the member understands to be in the Municipality of Koplik, dated the 6th of June 2007, given that the applicant said that he had been living with his family in Kiras which is Shkoder since 2001. The member would make similar observations in relation to the copy documentation from Koplik, dated the 6th of June 2007, from the Chair of the Municipality of Koplik, again, given that the applicant has been living in Kiras for some six years prior to leaving the jurisdiction of Albania and seeking to come to this jurisdiction."

8. In these proceedings the applicant complained that the Tribunal Member did not ask the applicant how he could rely on a certificate from the named district when he had lived somewhere else for so many years. In addition, the certificate from the Chair of the Municipality of Koplik is also considered to be unreliable by the Tribunal Member for the same reason and this too was never put to the applicant. An explanation is provided by the applicant on affidavit to clarify why the documentation provided is from these sources, in these places. The applicant says:-

"For example, the Tribunal Member states that the documents I submitted were issued in Koplik and that this is not credible as I resided in Kiras for the last six years that I lived in Albania. If I had been asked about this, I would have explained that as Koplik is the largest town in the region and as such is a kind of municipal centre, where from which such documents would generally be issued."

9. The applicant's account of his life in Albania described events in Koplik, where he lived originally, and from 2001 in Kiras/Shkoder. The court has had regard to the materials which demonstrate the geographical proximity of Koplik to Shkoder (approximately 19km) and the court has also had regard to the civic or political relationship between the Urban Municipality of Koplik and the town of Shkoder, within the District of Malesi e Madhe, all in the County of Shkoder. Had inquiry been made by the Tribunal Member of, the applicant or of an independent source, the relationships between these places would probably have come to light. It seems to me that this is a matter which ought to have been put to the applicant at the very least and should probably have been investigated by the Tribunal Member, not least because the applicant would be able to allay the concerns of the tribunal member if asked. The geographical and civic relationships between these places explain, apparently, why a person living in Kiras/Shkoder would fall under the jurisdiction of Koplik and also Malesi e Madhe. It was fundamentally unfair not to give the applicant a chance to clear up this confusion.

10. In relation to the obligation of the Tribunal Member to make independent inquiry in certain circumstances I note the dicta of Clarke J. in *Idiakhuea v. Minister for Justice* (Unreported, High Court, 10th May, 2005) as follows:-

"It should be recalled that the process before the RAT is an inquisitorial one in which a joint obligation is placed on the applicant and the decision maker to discover the true facts. It seems to me that an inquisitorial body is under an obligation to bring to the attention of any person whose rights may be affected by a decision of such a body any matter of substance or importance which that inquisitorial body may regard as having the potential to affect its judgment."

At p. 9 of the judgment the learned judge said:-

"If a matter is likely to be important to the determination of the RAT then that matter must be fairly put to the applicant so that the applicant will have an opportunity to answer it. If that means the matter being put by the Tribunal itself then an obligation so to do rests upon the Tribunal. Even if, subsequent to a hearing, while the Tribunal Member is considering his or her determination an issue which was not raised, or raised to any significant extent, or sufficient at the hearing appears to the Tribunal Member to be of significant importance to the determination of the Tribunal then there remains an obligation on the part of the Tribunal to bring that matter to the attention of the applicant so as to afford the applicant an opportunity to deal with it."

11. The failure to put the matters which caused doubt in the mind of the decision maker to the applicant was unfair and a breach of due process. It was part of the basis upon which critical documentary evidence was rejected and which in turn aided the decision to

reject credibility. It was therefore unlawful.

12. I am fortified in my view that the rejection of this important documentary evidence is unlawful by the two other reasons given by the Tribunal Member for discounting the documents and I refer to them notwithstanding the absence of a pleading relative thereto.

13. The first of these reasons is related to an allegation that the applicant failed personally to seek police protection or reconciliation through any of the reconciliation committees or the NGOs. Though not a matter raised by way of complaint in these proceedings, my view is that this finding was not warranted by the evidence in the case. On the face of the certificate (from the Peace Missionaries Union of Albania), the identity of the party seeking reconciliation cannot be determined. The language of the certificate is in the passive voice where the organisation says that 'its assistance was requested'. It is not possible to exclude the possibility that the applicant and his family either jointly or separately sought the assistance of this organisation and the applicant's evidence, as will be seen, is that "we [the family] sought assistance". In addition, the applicant has associated himself with complaints being made to the police and it is not apparent to me why this evidence was not even worthy of mention by the Tribunal Member. For example at p.g. 9 of the application for refugee status questionnaire, he states:-

"We reported it [the blood feud] many times to the police. They would come, question us and leave. They would say 'we will take action' but this was always to no avail."

Page 11, question 25a:-

"Q. Did you seek the assistance of, or report your fears, to the authorities?

A. Yes.

If yes, when and to whom did you report it.

A. I reported to the highest structures of the government, to the police and the Ministry of Order."

Question 24 of the s. 11 interview:

"Q. Did you report your problems to the police/government?

Yes, to the police.

Question 52:-

"Q. Why did you wait seven years before leaving Albania?

A. All this time we hoped it would be a peaceful agreement. We tried the Peace Commissioners and every avenue to reconcile of differences but they wanted revenge. In the end I had no option but to leave the place."

Question 61:-

"Q. Where did the reconciliation meetings take place?

A. The officers came to our house and then they went to their offices."

14. In the account of the oral evidence given at the Tribunal hearing, the Tribunal Member records as follows:-

15. "The member then posed the obvious question as to whether he had sought the assistance of any reconciliation groups in Albania as an adult on his own behalf. He insisted that these people came to his father's house and his father dealt with these people". The Tribunal Member also records that the applicant informed the Tribunal that:- "He never left the house at all and his contact with the police was when the police came to his family home. He did not go to the station." But this testimony cannot be read in isolation from the other evidence identified above where the applicant says that the family jointly were complainants as was he. The fact that his father 'dealt with these people' does not mean that the applicant was not present at such encounters and was not actively seeking assistance. The evidence that the police came to the applicant's family house in connection with a blood feud waged against the family is evidence of the applicant expressing his fears to the police, in my opinion.

16. My view of the evidence is that it is not fair to conclude that the applicant did not pursue a complaint with the police or did not seek the assistance of organisations who might assist. It seems to me that the weight of the evidence was entirely the other way and the mere fact that he did not make contact with the police or organisations separately from his father or by visiting the police personally or visiting the organisations personally does not permit a conclusion that he was somehow personally disconnected from the problem. A reasonable decision maker would not have decided that the applicant had not complained or sought remedy.

17. The other reason given by the Tribunal Member as to why the documents' import is rejected is because the applicant could not remember the precise name of the organisation. The versions of the name of the organisation expressed by the applicant bear striking similarity to its actual name and it seems to be that he cannot be faulted for not being able to remember the full formal title of the organisation. The finding in this regard is peripheral in nature and unfair. This inability to precisely recall and consistently use the correct title of the organisation should not have been used to reject the applicant's credibility or to cast doubt on it.

18. I emphasise that the applicant has not expressly pleaded or pursued complaints in respect of these other matters which I have identified. The reason I referred to them is to establish that the errors pleaded were not isolated or somehow technical. It seems to me that no part of the reasoning behind the rejection of a central piece of documentary evidence was reliable and on this basis I will order that the decision be set aside.

19. The Tribunal's findings in relation to the applicant's alleged failure to personally seek police protection or the assistance of organisations formed the basis of a lack of credibility but also formed the basis of a finding on state protection. The Tribunal notes that the applicant has not established that police protection is unavailable, that protection would not be offered to him or that protection would be ineffective and all based upon his alleged failure to seek it. The view I have expressed above regarding the alleged failure of the applicant to personally seek such protection indicates that this too is likely to be an unsound aspect of the Tribunal's decision.

20. Assessment of an asylum application involves an examination of the applicant's expressed fears and an examination of whether those fears are well founded by reference, for example, to the availability of state protection. The issue of state protection was tainted by an unfair finding that the applicant had personally failed to seek the assistance of the police or other organisations, as outlined above.

21. As these were telescoped proceedings I formally grant leave and grant an Order quashing the decision and remit the matter to the Tribunal.

[After this judgment was delivered Counsel addressed the Court on whether this decision and the quashed Tribunal decision should be placed on the applicant's file at the Tribunal. It was agreed that the matter is to be remitted for determination by a Tribunal member other than the author of the decision in suit. The applicant shall be entitled to make a further submission on and/or amendment of the Notice of Appeal and shall be at liberty to submit this decision and the quashed decision to the Tribunal for the rehearing of the appeal.]