Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Blood Feuds between Families as a Ground for Refugee Status: EH (Blood Feuds) Albania CG [2012]

Question(s) at stake:

Whether members of a family involved in a blood feud in Albania form a "particular social group" under the Refugee Convention and whether internal relocation is possible for them.

Outcome of the ruling:

Members of a family involved in a "blood feud" in Albania constitute a "particular social group" (PSG) under the Refugee Convention.

The legislative steps taken by the Albanian authorities in parts of the country where Kanun law predominates, especially in the north, "do not yet provide protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant" (para. 3). Relocating in another part of country, which is less influenced by the Kanun, may be a safe option, depending on how influential, powerful and committed to the feud the aggressor clan's is.

A claim for refugee status will normally succeed where a blood feud is established and internal relocation is not available, making self-containment the only option of protection against the risk of being killed by the opposing clan. Where an appellant is the next in line for killing, and depending on the likelihood that the aggressor clan would kill the appellant and its ability to do so, the same risk would also be capable of engaging Articles 2 and 3 of the ECHR.

A non-Kanun "modern blood feud" that would extend the risk of death to adult males from the avenger family and to non-males from families on both sides is not established.

The present appellant’s claim for international protection was refused as he did not establish that his family was involved in an active “blood feud”.

Topic(s):

- Immigration and Asylum

Keywords:

- Applicant's credibility
- Evidence
- Grounds/Reasons of persecution
- Membership of a particular social group
- Real Risk of persecution
- Refusal of asylum

Tag(s):

- Customary law
- Blood feud

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Country:

United Kingdom

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EH (blood feuds) Albania CG [2012] UKUT 00348 (IAC)

Link to the decision:

https://tribunalsdecisions.service.gov.uk/utiac/2012-ukut-348

ECLI:

No ECLI number / ECLI number unknown

Date:

15 October 2012

Jurisdiction / Court / Chamber:

Upper Tribunal (Immigration and Asylum Chamber)

Remedy / Procedural stage:

Appeal from the First Tier Tribunal (Immigration and Asylum)

Previous stages:

- In December 2009, the Asylum and Immigration Tribunal granted reconsideration of its decision to dismiss the appellant's appeal against the Home Office (HO) as it was accepted to disclose errors of law. It ordered the appeal to be reheard afresh by the Upper Tribunal.
- The appellant's appeal was dismissed by the Asylum and Immigration Tribunal in November 2009.
- The HO rejected the appellant's application for asylum and claims for human rights and humanitarian protection.

No official citations of previous stages are available.

Subsequent stages:

- No information found.

Branches / Areas of law:

International law; Public law; Asylum law.

Facts:

The appellant, EH, was a young Albanian male who entered the UK on 27 January 2009 and claimed asylum shortly after. He was 17 years old when filing the asylum application and 20 years old at the time of the current judgement.

The appellant's original claim for asylum was based on "perceived or actual political opinion as a family member of his late father" (para. 6). He argued that, upon return to Albania, he faced a real risk of persecution because of his father's affiliation with the Albanian Socialist Party (ASP).The appellant regularly accompanied his father at ASP meetings. In June 2007, a local police officer shot dead the appellant's father. The officer was a cousin of an individual who was believed to have warned the appellant's father to stop being involved in politics.

EH's claim for asylum and humanitarian protection was refused by the Home Office (HO), which did not find the case credible. In particular, the HO rejected the claim that his father's death was linked to his political affiliation. Having considered paragraph 395C of the Immigration Rules, the respondent concluded that even if the appellant's case had been truthful, the Albanian authorities would have been able to protect him from the "rogue police officer" (para. 10). Therefore, the appellant's removal to Albania would not be disproportionate.

The appellant appealed to the First Tier Tribunal. At the hearing, the appellant changed his claim. He argued that his father's killing had triggered a blood feud as both the police officer and the person "who had warned his father" to remove himself from socialist politics were members of the same clan. (para. 7) Attempts at reconciliation failed and, as a consequence, he lived in strict self-containment for one year after his father's death. Under Albania's Kanun law, self-confinement refers to the practice of male members of the threatened clan staying permanently indoors as an established means of protection against the consequences of a blood feud.

The appellant maintained he was at risk of facing "social pressure to carry out a revenge killing" to defend the honour of his family in accordance with Albanian customary law (para. 8). The appellant also argued that he feared being killed by the opposing clan because the "traditional blood feud", as set out by the customary law in the Kanun of Leke Dukagjinit, had been overtaken by the "modern blood feud", according to which the aggressor clan could undertake pre-emptive killings of the avenger clan. (para. 9) The appellant contended that under such circumstances, indefinite self-containment would be the only option

available to him upon return to Albania. He explained that the aggressor clan had displayed a dominant behaviour and was well-connected throughout the country, rendering internal relocation impossible.

The appeal was dismissed by the First Tier Tribunal, which did not find the appellant's revised core account credible, in particular the claim that he was at risk of a "pre-emptive killing by the aggressor family" (para. 11). Furthermore, the First Tier Tribunal reasoned that in case of an active blood feud affecting the appellant, sufficient protection would be provided by the Albanian authorities. Thus, the appellant's claim for "refugee recognition, humanitarian protection, or leave to remain on human rights grounds" was refused (para. 1).

The appellant sought reconsideration of the First Tier Tribunal's decision on the ground of errors of law. The Asylum and Immigration Tribunal granted reconsideration and gave directions for the appeal to "be reheard afresh." (para. 15) The appeal was transferred to the Upper Tribunal to be heard as a Country Guidance case.

Ruling:

After considering extensive evidence from country experts as well as significant background reports, the Upper Tribunal set aside the decision of the First Tier Tribunal and dismissed the appeal on all grounds.

The Upper Tribunal's ruling can be divided in two main parts, one providing country guidance and the other addressing the individual's claim at stake.

Country Guidance

The most important conclusions are as follow:

1. This country guidance, promulgated in 2012, replaces the previous guidance contained in *TB (Blood Feuds – Relevant Risk Factors) Albania CG* [2004] UKIAT 000158. (para. 74)
2. Members of families or clans subject to an active blood feud may constitute a PSG under the Refugee Convention. Stating otherwise would be

inconsistent with *K and Fornah* (this case is further discussed in the Commentary).

However, in blood feud cases where “the claimed risk is of pressure to commit” a murder, the individual is not entitled to international protection: murder is unlawful in Albania and local pressures “are at the level of social disapproval and are not universal”. (para. 66) 3. “The existence of a ‘modern blood feud’ is not established. Kanun blood feuds have always allowed for the possibility of pre-emptive killing by a dominant clan”. (paras. 59, 74(b)) 4. “While there remain a number of active blood feuds in Albania, they are few and declining. There are a small number of deaths annually arising from those feuds and a small number of adults and children living in self-confinement for protection. Government residential programmes to educate self-confined children exist but very few children are involved in them”. (paras 58 and 74(a)) 5. “The Albanian state has taken steps to improve state protection. However, in areas where Kanun law predominates, such as in Northern Albania, those steps do not yet provide sufficiency of protection from Kanun-related killing where an active feud exists and affects the individual claimant. Internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan”. (paras. 70, 74(c)) 6. Where “the geographical and political reach of the aggressor clan” in an active blood feud affecting an individual is “so wide as to preclude any internal relocation option, such that self-confinement is the only protection” against the risk of being killed by the opposing clan, that person will normally qualify for Refugee status. (paras. 70, 72, 74(e))
7. “In determining whether an active blood feud exists, the following list of factors should be considered by the fact-finding Tribunal:

- the history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud;

- the length of time since the last death and the relationship of the last person killed to the appellant;
- the ability of members of the aggressor clan to locate the appellant if returned to another part of Albania; and
- the past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek protection from the Albanian authorities." (para. 74(f))

8. "In order to establish that there is an active blood feud affecting an individual personally, the claimant must produce satisfactory *individual* evidence of its existence in relation to him. In particular, the claimant must establish:

i. His profile as a potential target of the feud identified and which family carried out the most recent killing; and

ii. whether the claimant has been, or other members of his family have been, or are currently, in self-confinement within Albania." (para. 74(g))

9. "Attestation letters from Albanian non-governmental organisations should not in general be regarded as reliable evidence of the existence of a feud". (paras. 56, 74(h))
10. Documents that may help establish whether an active blood feud exists include those issued by Albanian authorities such as the police, prosecution services and the courts, as long as they are reliable according to the standards laid out in *A v Secretary of State for the Home Department (Pakistan)* [2002]. (paras. 56, 74(i))
11. Unless consistent and factual, Albanian press reports are unlikely to have evidential weigh in establishing whether a blood feud exists. (paras. 57, 74(j))

12. Whether a blood feud continues to be active must be determined by the fact-finding Tribunal in each individual case. (para. 74(k))

Determination of the appeal

The Upper Tribunal found the Appellant's overall case to be lacking credibility due to a number of inconsistencies in his evidence and witness testimony. (para. 75)

In addition, the newspaper evidence discovered by one of the country experts confirms the passing of a male with the same name as EH's father. The newspaper does not give an account of a blood feud between the families and only reports on a single event between the appellant's father and a policeman. Also, no further killings were recorded. Therefore, the evidence set out in the appeal is insufficient to establish that EH was involved in an active blood feud. (paras. 78, 81)

Main quotations on cultural or religious diversity:

- "[V]ery often, as here, the claimed risk is of pressure to commit the next murder. The appellant in such a case can choose not to commit another murder. In *AMM and others (conflict; humanitarian crisis; returnees; FGM) Somalia CG* [2011] UKUT 445 (IAC), the Upper Tribunal considered whether a woman who, while opposed to female genital mutilation, might eventually give in to extreme societal pressure, lack of clan protection, and the risk of ruining their daughters' marriage prospects, and facilitate or carry out circumcision, could come within the ambit of the Refugee Convention." (para. 64)
- "The societal consequences of failure to murder in Albanian society are not on all fours with failure by a mother to facilitate genital mutilation of a female child in the desperate instability of a failing state such as Somalia was, when assessed in *AMM*. The evidence before us is that murder is unlawful in Albania, that blood feud killings carry long prison sentences, and that the local pressures are at the level of social disapproval and are not universal." (para. 66)

- “The conditions of self-confinement, where it is required, are that the male members of the threatened clan must remain within their homes permanently, unless a besa [forgiveness] is given for a particular event, such as a family funeral or wedding, or the feud is reconciled.” (para. 71)

Main legal texts quoted in the decision:

International law

- Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 (ECHR)
- EU Council Directive 2004/83/EC on Minimum Standards for the Qualification Status of Third Country Nationals or Stateless Persons or Refugees or as Persons Who Otherwise Need International Protection (No longer in force; date of end of validity 21 Dec 2013; repealed by Directive 2011/95/EU)

UK law

- Immigration Rules (adopted 23 May 1994, entered into force 1 October 1994)
- Refugee or Person in Need of International Protection (Qualification) Regulations SI2006/2525 (adopted 18 September 2006, entered into force 9 October 2006) (Protection Regulations)
- Statement of Changes in Immigration Rules CM6918 (the amended Immigration Rules)

Cases cited in the decision:

UK cases:

- *Amm and Others (Conflict; Humanitarian Crisis; Returnees; FGM) Somalia CG* [2011] UKUT 445

- *AN and NN (s.83 – asylum grounds only) Albania* [2007] UKAIT 00097
- *Koci* [2003] EWCA Civ 1507
- *TB (Blood Feuds – Relevant Risk Factors) Albania CG* [2004] UKIAT 000158

Family as a 'particular social group':

- *SB (PSG – Protection Regulations – Regulation (6) Moldova CG* [2008] UKIAT 00002
- *SSHD v K; Fornah v SSHD* [2006] UKHL 46

Self-containment or 'living discreetly':

- *HJ (Iran) and HT (Cameroon) v SSHD* [2010] UKSC 31

Test of reliability (blood feud attestation documents):

- *A v SSHD (Pakistan)* [2002] UKIAT 00439

Commentary

Blood Feuds between Families as a Ground for Refugee Status: EH (Blood Feuds) Albania CG [2012]

Country Guidance (CG) cases are specific to the UK immigration system. They are a unique fact-based form of assessment because they involve the evaluation of a large number of evidences related to the general social and political conditions in a specific country, as well as the particular circumstances of an individual case. They are binding on subsequent cases concerning similar issues and factual evidence (Thomas 2008; Clayton and Firth 2018: 389).

As such, the Country Guidance case of *EH* is an authoritative precedent for asylum claims concerning blood feuds in Albania. It builds on, and replaces, the Country Guidance in *TB (Blood Feuds – Relevant Risk Factors) Albania CG*[2004] that focused specifically on factual matters relevant to determining the nature of the risk(s) faced by an individual involved in an active blood feud upon return to Albania. *EH* broadens the scope of* TB* by contributing to the debates on whether family ties may create a PSG ground on which to obtain refugee status and

whether relocating to the country of origin would be safe.

Regarding the PSG question, the Upper Tribunal confirmed that members of a family or a clan involved in a blood feud in Albania may fall under this ground. The Upper Tribunal followed *K and Fornah* [2006], in which the House of Lords referred to the family as “the quintessential social group”. As noted in *K and Fornah* [2006] (para. 45), the position on family membership as a PSG is consistent with Article 23(1) of the 1966 International Covenant on Civil and Political Rights, which states that *“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”*. This conclusion is also in line with the UNHCR Blood Feud Guidelines 2006. UNHCR maintains that family members are linked by an immutable characteristic, namely the close ties that link family members closely together.

On the sufficiency of protection, the Upper Tribunal reasoned that traditional Albanian society, particularly in the northern part of the country, is influenced by a strict code of honour as set out by the “Kanun of Leke Dukagjinit”. The Kanun customary law lays down strict rules of conduct within Albanian society. It includes a framework for conflict regulation to the effect that, where a person belonging to clan A committed a murder or some other offence as part of a dispute with clan B, a senior male figure from clan B must avenge the killing to save the family honour. This is because the latter can only be restored by the “taking of blood” from the adversarial family. The Kanun prohibits the retributive killing of women, children, and the elderly. However, it does not protect a male child who will inherit an unresolved blood feud (Montgomery 2019; Saadiku 2014; Zhilla 2011). As such, this case recognizes that in areas where Kanun law is prevalent, the state does not yet provide sufficient protection for individuals affected by an active feud. Regarding the cultural practice of self-containment, the Upper Tribunal found the provision to be analogous to the “living discreetly” requirement for homosexual men in Cameroon in *HJ (Iran) and HT (Cameroon)* [2010]. Therefore, it adopted the conclusion of the Supreme Court in *HJ and HT* [2010] that international protection should be available to an individual “living discreetly”, or in self-containment, where he/she fears persecution in case of

living openly (in the case of *EH*, a real risk of being killed by the opposing clan).

On the specific facts of the case under consideration, the Upper Tribunal held that the claimed risk of being pressured to commit the next killing in a blood feud would not fall within the Refugee Convention's remit. While acknowledging the societal pressure to commit the next killing in order to restore one's family honour, the Upper Tribunal noted that societal pressure, albeit prevalent, is not extreme. It also reasoned that the option of self-containment is provided for by the Kanun as a protective measure and an alternative way of life. Thus, the Upper Tribunal agreed with the principle in *AMM and others* [2011] and considered its relevance to *EH* given that the appellants in both cases faced societal pressure to commit a crime against their will. However, the Upper Tribunal justified a different outcome in the current case by distinguishing between the factual elements in the two cases. In *AMM and Others* [2011], the Upper Tribunal held that the risk of pressure to perform FGM could come within the Refugee Convention's remit. It found that a mother who refuses to commit FGM on her daughters would be ostracized and lose the protection of her clan with no alternative options available to her.

In conclusion, the legal reasoning in the *EH* case illustrates the careful balancing exercise the Upper Tribunal undertook between precedents, cultural evidence, and individual circumstances, seeking to provide international protection where it is deemed necessary. It however set a relatively high threshold for showing the existence of a blood feud by specifying the requirements to meet and the evidence to provide.

It should be noted that after the *EH* case, the HO adopted a Country Policy and Information Note (CPIN) on Albania in 2018 in order to guide its decision makers. According to the CPIN, claims based on blood feuds are likely to be certifiable as "clearly unfounded" under *section 94(3) of the Nationality, Immigration and Asylum Act 2002.* The effect of certification is that such claims are precluded from progressing through the in-country appeals system and judicial review (limited on errors of law) is their only remedy. Following *EH*, further guidance on certification was issued by the Court of Appeal in *R (FR and KL (Albania)) v SSHD* [2016],

where the certification of two claims based on blood feuds in Albania was quashed.

Literature related to the main issue(s) at stake:

Reports and guidelines cited in the judgement:

- UK Board Agency. 2010 “Operational Guidance Note: Albania”.
- UNHCR. 2002. “Guidelines on International Protection: ‘Membership of a Particular Social Group’ within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees” (UNHCR PSG Guidelines).
- UNHCR. 2006. “UNHCR Position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a Fear of Persecution due to an Individual’s Membership of a Family Engaged in a Blood Feud” (UNHCR Blood Feud Guidelines).
- U.S. Department of State. 2010. Country Reports on Human Rights Practices 2010: Albania (Bureau of Democracy, Human Rights and Labor).

Reports and guidelines cited in the commentary:

- Home Office. 2018. “Country Policy and Information Note: Blood Feuds, Albania Background information, including internal relocation”, available at <https://www.gov.uk/government/publications/albania-country-policy-and-information-notes> accessed on 8 July 2022.

Academic literature cited in the template commentary:

- Clayton, Gina and Georgina Firth. 2018. *Immigration and Asylum Law.* Oxford: Oxford University Press.
- Montgomery, David. 2019. *Everyday Life in the Balkans.* Bloomington: Indiana University Press.
- Sadiku, Mirjona. 2014. “A Tradition of Honor, Hospitality and Blood Feuds: Exploring the Kanun Customary Law in Contemporary Albania”. *Balkan Social Science Review* 1(3): 93-113.

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- Zhilla, Fabian. 2011. “Organised Crime and Judicial Corruption in the Western Balkans: Are Customary Norms Playing Any Role?”. *Journal of Financial Crime* 18(4): 387-404.

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