

CANADA / JUDGMENT

TB9-32683

COURT

Refugee Appeal Division

DECIDED

9 September 2020

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RAD File / Dossier de la SAR : TB9-32683 TB9-32684 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXXXXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision September 9, 2020 Date de la décision Panel Caitlin Maxwell Tribunal Counsel for the persons who are the subject of the appeal Tina Hlimi Conseil des personnes en cause Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] These are my reasons for granting the appeal of XXXX XXXX ("Principal Appellant") and XXXX XXXX ("Associate Appellant"). I am substituting a decision that the Appellants are Convention refugees.
- [2] The Appellants, who are married, are both citizens of Albania. They claim a fear of persecution based on a longstanding blood feud between the Principal Appellant's family and a rival clan. The Refugee Protection Division ("RPD") largely accepted their allegations but found that the presumption of state protection had not been rebutted. On appeal, the Appellants argue that the RPD ignored evidence in reaching its conclusion on state protection and failed to properly analyze the risk of gender-based violence facing the Associate Appellant. ROLE OF THE RAD
- [3] Generally, I must review a decision of the RPD on a standard of correctness.¹ The exception to this rule is where the RPD enjoys a meaningful advantage in assessing the credibility of oral testimony, which may attract deference in particular cases.² In this case, however, the RPD had no advantage. I have therefore considered whether its decision was correct.

ANALYSIS

- [4] The determinative issues on appeal are the credibility of the Appellants' allegations, as well as a lack of state protection and viable internal flight alternative ("IFA") in Albania. For the reasons that follow, I agree with the Appellants that the RPD erred in its determination, and find that they face a serious possibility of persecution as members of the Principal Appellant's family, which is a particular social group warranting protection under the Convention. The Associate Appellant further faces a specific risk of persecution on account of her gender, which is also a particular social group warranting protection under the

Convention. Blood feud credibly established; risk of persecution is forward-looking

- [5] The RPD appeared to accept the existence of the blood feud; it did not note any credibility concerns with the Appellants' evidence in this regard. Having independently reviewed the record and the audio recording of the hearing, I find that the Appellants' allegations have been credibly established.
- [6] The Appellants provided evidence that the Principal Appellant had been threatened with death by members of the rival clan;³ that he and the Associate Appellant had been physically attacked by the rival clan when the Associate Appellant was nine months' pregnant, resulting in a stillbirth;⁴ and that the Associate Appellant was subsequently abducted and raped by members of the rival clan.⁵ The Principal Appellant's father provided evidence that his family remains in isolation and that the threats have continued since the Appellants came to Canada.⁶ The existence of the feud was also confirmed by the Association of Missionaries of Peace and Reconciliation⁷ as well as by the local council of elders, ⁸ who indicated that further attempts at reconciliation made in April 2019 were unsuccessful because the rival clan has refused to reconcile. Based on the totality of the evidence, I accept, on a balance of probabilities, that efforts to end the blood feud have not been successful to date.
- [7] I further note that the ongoing nature of the conflict, despite the passage of time, is in line with guidance from the United Nations High Commissioner for Refugees ("UNHCR"), which highlights "the cultural context of [...] blood feud[s], in which threats do not expire."⁹ The documentary evidence confirms that extended family members may continue to be affected by a blood feud, particularly where immediate relatives have left the country,¹⁰ and that while adult male relatives were traditionally the targets of such feuds, threats have extended to women and children in modern times.¹¹ While statistics on the number of those affected by blood feuds in Albania vary widely,¹² and deaths resulting from blood feuds appear to be in decline, at least according to official government figures,¹³ the evidence confirms that they continue to occur.¹⁴
- [8] I therefore find that the Appellants face a forward-looking risk of persecution upon return to Albania. Adequate state protection not available
- [9] Having established an ongoing risk of persecution, I must consider whether there is adequate state protection for the Appellants. I agree with the Appellants that the RPD erred in selectively relying on the country conditions evidence to determine the existence of state protection for those involved in blood feuds, and that it failed to adequately address whether state protection was available to the Associate Appellant, who has suffered gender-based persecution as a result of the feud.

- [10] I accept that the Appellants sought help from the police following the initial attack by members of the rival clan, but that the police refused to register the complaint, as confirmed by the Principal Appellant's mother.¹⁵ I also accept that the Appellants did not seek further assistance from the police after the Associate Appellant was sexually assaulted, because they did not want anyone to know what had happened to her.¹⁶
- [11] Sources indicate that while blood feuds have been in decline in Albania in recent years, "the problem had not yet been eliminated."¹⁷ According to the Albanian ombudsman, although the government is taking steps to prosecute these crimes, efforts to protect families and prevent deaths resulting from blood feuds remained insufficient.¹⁸
- [12] Corruption has further hampered these efforts. According to the US Department of State, "Police did not always enforce the law equitably. Personal associations, political or criminal connections, poor infrastructure, lack of equipment, or inadequate supervision often influenced law enforcement."¹⁹ The Department further notes that "[w]hile the government had mechanisms to investigate and punish abuse and corruption, police corruption remained a problem."²⁰ According to the head of the European Assistance Mission to the Albanian Justice System, "the whole judicial system in Albania is corrupt...the fact that you know somebody or you pay, is understood as something normal. Lawyers give money to judges, judges demand money, and even prosecutors take money."²¹ The head of the Mission noted that while the government appears to have taken positive steps toward eliminating corruption, these efforts "are just a façade."²²
- [13] According to the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, blood feud killings "continue to occur in part due to a tendency of the judiciary to impose lighter sentences on perpetrators, despite the fact that the Criminal Code of Albania provides for serious penalties for blood feud murder or threat."²³
- [14] With respect to gender-based violence in particular, the Committee on the Elimination of Discrimination Against Women indicates that "gender-based violence still remains an important issue in the country as it is under-reported, mechanisms of redress are not well known, and there is a fear of bringing shame to the family and fear of reprisal by perpetrators."²⁴ While Albania has taken significant steps toward addressing gender-based violence in recent years,²⁵ sources report that enforcement of legislation and protection orders remains an issue.²⁶
- [15] The panel failed to consider this context before faulting the Associate Appellant's reluctance to engage the state following the sexual assault. The jurisprudence is clear that protection need not be sought if it is not likely to be forthcoming,²⁷ and that a claimant's personal circumstances must be taken into account when assessing whether it was reasonable for her to seek protection.²⁸ Given the Appellants' prior failed attempt to seek police assistance as well as the documentary evidence on the lack of adequate state protection for those involved in blood feuds and for women facing gender-based violence, I find the Appellants have rebutted the presumption of state protection with clear and convincing evidence.²⁹ No

viable internal flight alternative

- [16] I also find that the Appellants have established that they face a serious possibility of persecution throughout the country.³⁰ The RPD questioned the Appellants about whether they could relocate to Tirana at the hearing. They indicated that the small size of the country, Tirana's close proximity to their hometown, the civil registration system, and the rival clan's connections to government and organized crime meant they would not be able to safely relocate.³¹
- [17] While the RPD found that there was insufficient evidence to corroborate the rival clan's connections, I accept the Appellants' allegation that they are well connected with the ruling political party as well as organized crime; in addition to the Principal Appellant's evidence that this resulted in one of the clan members being released early from prison,³² I note that the council of elders has confirmed these connections in its letter.³³
- [18] The US Department of State indicates that "to receive government services, individuals changing place of residence within the country must transfer their civil registration to their new community and prove the legality of their new domicile through property ownership, a property rental agreement, or utility bills."³⁴ The UK's Upper Tribunal (Immigration and Asylum Chamber) has held that "where the [rival] clan has government connections, locally or more widely, the requirement to transfer civil registration to a new area [...] would appear to obviate the possibility of 'disappearing' in another part of the country."³⁵ Given the credible allegations of government connections in this case, I accept, on a balance of probabilities, that the agents of persecution have the means to locate the Appellants in Tirana. Given the seriousness of the attacks to date as well as the evidence of the Appellants' relatives and of the council of elders that the threats have continued since the Appellants' departure, I also accept that the agents of persecution have an ongoing motivation to pursue the Appellants. For this reason, I find that an IFA is not available.

CONCLUSION

- [19] The appeal is allowed. I substitute my own decision that the Appellants are Convention refugees. (signed) "Caitlin Maxwell" Caitlin Maxwell September 9, 2020 Date 1 Canada (Minister of Citizenship and Immigration) v Huruglica, 2016 FCA 93, at para. 103. 2 Ibid., at para. 70. 3 Exhibit RPD-1, RPD Record, Exhibit 8, Letter of XXXX Witness to threats, 18 July 2019, at p. 234. 4 Exhibit RPD-1, RPD Record, Exhibit 2.1, Basis of Claim ("BOC") Narrative, pp. 26-27; see also, Exhibit 9, Hospital report for the Associate Appellant, confirming post-attack treatment, 23 September 2017; Exhibit 8, Letter of P.S., Neighbour who drove Appellants to hospital following attack, 12 October 2018, p. 213. 5 Exhibit RPD-1, RPD Record, Exhibit 4, BOC Narrative Amendment, p. 45. 6 Exhibit RPD-1, RPD Record, Exhibit 8, Letter of XXXX Father of the Principal Appellant, 23 July 2019, p. 225. 7 Exhibit RPD-1, RPD Record, Exhibit 9, Attestation, Association of Missionaries of Peace and Reconciliation, 11 October 2018, p. 271. 8 Exhibit RPD-1, RPD Record, Exhibit 9, Certificate of the Council of Elders of Rapshe, 2 August 2019, p. 273. 9 United Nations High Commissioner for Refugees,

"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 or clan engaged in a blood feud," 17 March 2006, available at <<https://www.asylumlawdatabase.eu/en/content/en-unhcr-position-claims-refugee-status-under-1951-convention-relating-status-refugees-based>>, at p. 2. 10 Exhibit RPD-1, RPD Record, Exhibit 3, National Documentation Package ("NDP") for Albania, 29 March 2019, Item 7.7, Belgium, Commissioner General for Refugees and Stateless Persons, "?Blood Feuds in contemporary Albania: Characterisation, Prevalence and Response by the State," 29 June 2017, at p. 18, s. 3.4. 11 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019, Item 1.7, UK Home Office, ?Country Information and Guidance, "Albania: Blood Feuds (Version 2.0)," 6 July 2016, at p. 13, s. 6.1.2. 12 Ibid., at pp. 12-16, s. 6. 13 Ibid; see also Item 7.7, Belgium, Commissioner General for Refugees and Stateless Persons, "?Blood Feuds in contemporary Albania: Characterisation, Prevalence and Response by the State," 29 June 2017, at p. 18, s. 3.4. 14 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019, Item 1.7, UK Home Office, ?Country Information and Guidance, "Albania: Blood Feuds (Version 2.0)," 6 July 2016, at pp. 13, s. 6.1.2 and p. 15, s. 6.1.8; Exhibit 5, Amanda Petrusich, "In the Land of Vendettas That Go On Forever," Virginia Quarterly Review (VQR Online), 93:4 (Fall 2017), p. 185. 15 Exhibit RPD-1, RPD Record, Exhibit 8, Letter of XXXX., Mother of the Principal Appellant, 17 July 2019, p. 228. 16 Exhibit RPD-1, RPD Record, Exhibit 4, BOC Narrative Amendment, p. 45; Audio recording of the RPD hearing proceeding, Testimony of the Principal Appellant at 1.11.40. 17 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019 Item 1.10, European Asylum Support Office, EASO Country of Origin Information Report, "Albania: Country Focus," November 2016, at p. 32; see also, Item 7.7, Belgium, Commissioner General for Refugees and Stateless Persons, "?Blood Feuds in contemporary Albania: Characterisation, Prevalence and Response by the State," 29 June 2017, at p. 18, s. 3.4. 18 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019, Item 1.7, UK Home Office, ?Country Information and Guidance, "Albania: Blood Feuds (Version 2.0)," 6 July 2016, at p. 15, s. 6.1.8. 19 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019, Item 2.1, US Department of State, Country Reports on Human Rights Practices for 2018: Albania, 13 March 2019, at pp. 5-6. 20 Ibid., p. 5. 21 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019, Item 1.10, European Asylum Support Office, EASO Country of Origin Information Report, "Albania: Country Focus," November 2016, at p. 27. 22 Ibid. 23 Ibid., at p. 34. 24 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019, Item 1.3, UK Home Office, Country Policy and Information Note. Albania: Women fearing domestic abuse (Version 2.0), December 2017, p. 18, s. 5.1.2. 25 See, e.g., Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019, Item 5.7, ?UN Committee on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Albania, CEDAW/C/ALB/CO/4, 25 July 2016, at p. 5, para. 22. 26 Ibid.; see also, Item 2.1, US Department of State, Country Reports on Human Rights Practices for 2018: Albania, 13 March 2019, at p. 18. 27 Canada (Attorney General) v Ward, [1993] 2 SCR 689. 28 Lakatos v Canada (Citizenship and Immigration), 2018 FC 367, at para. 22; Aurelien v Canada (Citizenship and Immigration), 2013 FC 707 at para.

13. 29 Canada (Attorney General) v Ward, supra note 27. 30 Rasaratnam v Canada (MEI), [1992] 1 FC 706 (CA). 31 Audio recording of the hearing at 1.33.30 - 1.38.15. 32 Exhibit RPD-1, RPD Record, Exhibit 2.1, BOC Narrative, p. 26. 33 Exhibit RPD-1, RPD Record, Exhibit 9, Certificate of the Council of Elders of Rapshe, 2 August 2019, p. 273. 34 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019, Item 2.1, US Department of State, Country Reports on Human Rights Practices for 2018: Albania, 13 March 2019, at p. 14. 35 Exhibit RPD-1, RPD Record, Exhibit 3, NDP for Albania, 29 March 2019, Item 1.7, UK Home Office, "Country Information and Guidance, "Albania: Blood Feuds (Version 2.0)," 6 July 2016, at pp. 7-8, s. 2.6.2.

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