Federal Court  Cour fédérale

Date: 20101222

Docket: IMM-2066-10

Citation: 2010 FC 1324

Ottawa, Ontario, December 22, 2010

PRESENT: The Honourable Mr. Justice Lemieux

BETWEEN:

SAMI MURATI
LORENA MURATI
ERMAL MURATI

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The principal issue raised in this judicial review proceeding brought by the applicants against the decision of March 29, 2010, rendered by the Refugee Protection Division (the RPD), which rejected their claims for refugee protection, is whether it was reasonable to conclude that

Albania was in a position to protect the applicants, who are victims of a blood feud. The RPD also decided that they had an internal flight alternative (IFA).

[2] The RPD found the applicants to be credible. They are Sami Murati (the father), his daughter Lorena and his son Ermal (the Muratis). The RPD also heard by telephone the testimony of Gjin Marku, Chair of the Committee of Nationwide Reconciliation (CNR). Mr. Marku also answered written questions submitted by counsel for the Muratis. Uncle Nazmi is the only male member of the Murati family still living in Albania.

[3] A conflict erupted between the Hoxha and Murati families over a piece of land that Sami's uncle, Nazmi Murati, said that he owned, a claim challenged by the Hoxha family, which had erected a building on the land in question.

[4] On May 5, 2007, during a quarrel over the land, Arben Murati, Nazmi's only son, killed Yilli Hoxha, a death that the latter's family vowed to avenge when it declared a blood feud the following day, May 6, 2007, against the Murati family, including Sami's family. Arben Murati disappeared but is wanted by the authorities for involuntary homicide.

[5] On May 7, 2007, Sami Murati, his son and his Uncle Nazmi approached the CNR for assistance; the CNR accepted the mandate, instructing the Muratis to go into hiding during its investigation. Reconciliation between the two families turned out to be impossible, given the Hoxhas' adamant refusal to forgive and reconcile with the Muratis.

[6] While in hiding with his son, Sami Murati learned from his wife that his daughter Lorena had been the target of an attempted kidnapping. The applicants left Albania for the United States on September 8, 2007, and entered Canada on May 9, 2008, to make a claim for refugee protection.

II. The RPD decision

[7] First, the RPD decided that section 96 of the *Immigration and Refugee Protection Act*, (2001, c. 27) [the Act], was not available to the applicants, as they were alleging crime and fear of vengeance, two factors unrelated to the five Convention grounds; this finding is not challenged. The matter is therefore limited to section 97, which reads as follows:

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally	97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
(*a*) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or	a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
(*b*) to a risk to their life or to a risk of cruel and unusual treatment or punishment if	b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,	(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) …	(ii) …
(iii) …	(iii) …
(iv) …	(iv) …
Person in need of protection	Personne à protéger
(2) …	(2) …

[8] Second, the RPD reached the following conclusion:

> [9] The claimants never asked for protection from the authorities in their state and the principal claimant's uncle simply asked for protection from the Nationwide Reconciliation Committee, which is a non-governmental organization. Sami explained that he had information that the state did not act on blood feuds and that it was useless to file a complaint since the state offers no protection.
>
> [10] According to Gjin Marku, witness and President of the Nationwide Reconciliation Committee, with whom the panel spoke over the telephone during the hearing, the police would have been a hindrance in this case because they do not intervene. According to him, it is risky for the family and the police. Furthermore, Mr. Marku stated that the police do not accept written complaints.
>
> [Emphasis added.]

[9] According to the RPD, this conclusion is drawn from Sami's testimony regarding the availability of protection from the Albanian state for victims of blood feuds:

> [16] When the claimant Sami was asked whether he had tried to obtain state protection, he replied that he had not. He added [TRANSLATION] "We have information that the state lets that slip." and "It is useless to file a complaint since the State does not offer protection." Sami then went on to say that he thought that the police would not do anything and that he never asked for state protection because the police do not offer any help.
>
> [Emphasis added.]

[10] Relying principally on the Supreme Court of Canada's decision in *Ward v. Canada (Attorney General)*, [1993] 2 S.C.R. 689, as well as on several decisions of the Federal Court of Appeal, the RPD noted the following principles relating to state protection:

a. Claimants are required to try to obtain state protection, unless it is objectively reasonable not to do so;
b. States are presumed to be capable of protecting their nationals;
c. To rebut this presumption, the claimants must provide clear and convincing evidence of a state's inability to protect;
d. The level of protection that the state must provide is not that of perfect protection, but of adequate protection;
e. Claimants must demonstrate that they have taken all reasonable steps under the circumstances to obtain protection;
f. In the absence of a compelling explanation, a failure to pursue state protection opportunities within the home state will usually be fatal to a refugee claim—at least where the state is a functioning democracy with a willingness and the apparatus necessary to provide a measure of protection to its citizens;
g. The elements of proof to establish state protection is inadequate must not only be reliable and probative, but they must also convince the Board, on a balance of probabilities, that state protection is inadequate;
h. A refugee protection claimant cannot rebut the presumption of state protection in a country with a functioning democracy simply by stating that there is a subjective reluctance to solicit state protection;

i. Claimants must ask for protection from the authorities that are able to offer protection, not only an offer to attempt reconciliation;

[11] After setting out these principles, the RPD determined the following:

> [27] In approaching only one non-governmental organization for reconciliation and not making any request for protection from the law enforcement authorities, the claimants did not make sufficient efforts to obtain protection in their country.
>
> [28] The claimants did not refute the presumption of state protection in this case.

[12] The RPD added, however, that even if state protection were not available to the applicants, an IFA was available to them.

[13] Before listing the principles governing state protection, the RPD focused on Sami Murati's testimony regarding the availability and efficiency of the protection offered by the Albanian state, reproduced at paragraph 9 of these reasons, along with that of Mr. Marku.

[14] To assess the probative value of their testimony, the RPD consulted the National Documentation Package on Albania and cited passages from the three documents selected:

> (1) The *Human Rights Report on Albania* published by the US Department of State (DOS) published in February 2009 (Document 2.1), (2) the *2008 Operational Guidance Note on Albania* published by the UK Home Office, UK Border Agency issued in 2008 (Guidance Note) and (3) the Issue Paper entitled *Albania: Blood Feuds*, May 2008, prepared by the Research Directorate of the Immigration and Refugee Board of Canada (IRB).

[15] It cited the following passage from the US DOS:

> Statistics varied on blood feud activity. According to the Interior Ministry, there were four blood feud related killings, out of a total of 85 murders during the year, a decrease from previous years. According to the Ministry of the Interior, this is the lowest number in 18 years. Police restarted investigations in some older cases, and uncovered the perpetrators of 81 murder cases from previous years. Nongovernmental organizations (NGOs) cited higher levels of blood feud activity and numbers of families effectively imprisoned in their homes out of fear of blood feud reprisals. The tradition of blood feuds stems from a traditional code of honor that is followed in only a few isolated communities. In 2007 the parliament amended the criminal code to criminalize blood feuds and make them punishable by a three-year sentence.
>
> The Court of Serious Crimes tried blood feud cases. The law punishes premeditated murder, when committed for revenge or a blood feud, with 20 years' or life imprisonment.
>
> [Emphasis added.]

[16] The RPD cited two passages from the UK Guidance Note:

> The USSD notes that statistics vary on blood feud activity and that the *kanun* is followed in only a few isolated communities. According to the Interior Ministry, 2 of the 96 murders during 2007 were related to blood feuds, the number of such killings having dropped due to an increase in investigations.

[17] According to the RPD, the following excerpt from the Guidance Note at Section 3.6.8, under the heading "Blood feuds", contradicts Mr. Marku's testimony to the effect that the police do not accept written complaints:

> ***Sufficiency of protection***. Local police units report to the Ministry of the Interior and are the main force responsible for internal security. As noted above, the law provides for 20 years to life imprisonment for killing linked to a blood feud and blood feuds are punishable by a 3-year sentence. The government has set up a special crimes court and a witness protection programme. **There have been prosecutions in blood feud murder cases**. The Commissioner for Human Rights in Europe stated that police managers have supported reconciliation activities and the CNR. Despite formal efforts made by the authorities to address the issue,

> some involved in blood feuds may not report the matter to the authorities because of mistrust of state institutions and/or because they choose to execute retribution outside of the legal system. There is no evidence to indicate that individual Albanians fearing the actions of those seeking to carry out blood feud cannot access protection from the Albanian police and pursue these through the legal mechanisms that have been set up to deal with blood feuds.
>
> [Emphasis added.]

[18] On this point, the RPD was of the opinion

> . . . that this information source is credible. In balancing the probative value of this last piece of evidence, which is objective and trustworthy, with that of Gjin Marku, President of an NGO, the panel grants more value to the conclusions in the United Kingdom report than to the evidence provided by Gjin Marku regarding availability of protection.
>
> [Emphasis added.]

[19] The RPD also cited the conclusion described at paragraph 3.6.11 of the Guidance Note:

> In general, the Albanian Government is able and willing to offer effective protection for its citizens who are the victims of a blood feud; however, there may be individual cases where the level of protection offered is, in practice, insufficient. The level of protection should be assessed on a case by case basis taking into account what the claimant did to seek protection and what response was received. Internal relocation may be appropriate in some cases.
>
> [Emphasis added.]

[20] In the next step of its analysis, the RPD discussed the role of reconciliation committees in Albania; it was in this context that it referred to the content of the IRB Issue Paper on blood feuds in Albania. It wrote the following:

> In the *Issue Paper* on Albania and the blood feuds, dated May 2008, it is mentioned in paragraph 5.2, that the reconciliation committees can only offer little or no protection to citizens who are involved in a blood feud. The reconciliation committees can only work to resolve the actual blood feuds. There are also other reconciliation committees, such as the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes (AFCR), which was set up in December 1995 and attempts to resolve conflicts, particularly blood feuds, through mediation. A BBC article from September 23, 2005, mentions that Aleksander Kola, a member of the AFCR, allegedly resolved ten blood feuds in two years. Therefore, resolving blood feuds through reconciliation is not the exclusive domain of the Nationwide Reconciliation Committee presided by Gjin Marku. In paragraph 4.4.4 of the aforementioned evidence, many other reconciliation committees are mentioned.
>
> [Emphasis added.]

[21] It added:

> However, when asking for protection, the claimants must ask for protection from the authorities that are able to offer protection, not only an offer to attempt reconciliation. These two steps can be undertaken concurrently, but the claimants are still required to try to obtain state protection, unless it objectively reasonable not to do so. States are presumed to be capable of protecting their nationals. To refute this presumption, the claimants must provide clear and convincing evidence of a state's inability to protect. The level of protection that the state must provide is not that of perfect protection, but of adequate protection.
>
> [Emphasis added.]

and concluded:

> In approaching only one non-governmental organization for reconciliation and not making any request for protection from the law enforcement authorities, the claimants did not make sufficient efforts to obtain protection in their country.
>
> [Emphasis added.]

III. Analysis

A. *Standard of review*

[22] In *Hinzman v. Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171, the Federal Court of Appeal held that questions as to the adequacy of state protection were questions of mixed fact and law, ordinarily reviewable against a standard of reasonableness.

[23] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the Supreme Court of Canada explains what constitutes a reasonable decision:

> **47** Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.
>
> [Emphasis added.]

B. *Discussion*

[24] There is recent case law from this Court concerning blood feuds in Albania, in which decisions by the Refugee Protection Division (RPD) rejecting claims for refugee protection were brought before my colleagues for judicial review. The evidence before the RPD in many of those cases is remarkably similar to the evidence before the RPD in this case. My colleagues have set aside several of these decisions.

[25] The existence of similar cases decided by my colleagues raises a legal principle explained by this Court in *Almrei v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 1025, at paras. 61 and 62:

> 61 The principle of judicial comity is well-recognized by the judiciary in Canada. Applied to decisions rendered by judges of the Federal Court, the principle is to the effect that a substantially similar decision rendered by a judge of this Court should be followed in the interest of advancing certainty in the law. I cite the following cases:
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> - *(Haghighi v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 98, A.C.W.S. (3d) 272).
> - *Benitez v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 461,
> - *Pfizer Canada Inc. v. Canada (Minister of Health)*, 2007 FC 446:
> - *Aventis Pharma Inc. v. Apotex Inc.*, 2005 FC 1283;
> - *Singh v. Canada (Minister of Citizenship and Immigration)*, [1999] F.C.J. No. (1008).
> - *Ahani v. Canada (Minister of Citizenship and Immigration.)*, [1999] F.C.J. No. (1005).
> - *Eli Lilly & Co. v. Novopharm Ltd.* (1996), 67 C.P.R. (3d) 377;
> - *Bell v. Cessna Aircraft Co.*, [1983] 149 DLR (3d) 509 (C.B.S.C.)
> - *Glaxco Group Ltd. et al. v. Minister of National Health and Welfare et al.*, 64 C.P.R. (3d) 65;
> - *Steamship Lines Ltd. v. M.R.N.*, [1966] Ex. CR 972.
>
> 62 There are a number of exceptions to the principle of judicial comity as expressed above they are:
>
> 1. The existence of a different factual matrix or evidentiary basis between the two cases;
> 2. Where the issue to be decided is different;
> 3. Where the previous condition failed to consider legislation or binding authorities that would have produced a different result, i.e., was manifestly wrong; and
> 4. The decision it followed would create an injustice.

[26] I find that the following decisions of my colleagues are essentially similar to the case before me: (1) the claimants' credibility was recognized—in other words, each panel believed that the refugee protection claimants were victims of a blood feud; (2) state protection was determinative (and the existence of an IFA was also found); (3) the documentary evidence was similar, namely, the US DOS documentation, the Guidance Note by the UK Home Office and the IRB Issue Paper on blood feuds in Albania; and (4) in certain cases written evidence had been provided by Mr. Marku. These cases are:

a. *Sokol v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1257 [*Sokol*], decided by Justice O'Keefe;
b. *Precectaj v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 485 [*Precectaj*], decided by Justice Mandamin;
c. *Prekaj v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1047 [*Prekaj*], decided by Justice Russell;

[27] Not included in this list are (1) the decision of Justice Harrington in *Mirashi v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 102 and (2) that of Justice Boivin in *Krasniqi v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 350. In neither case did the RPD believe the stories of the claimants for refugee protection.

[28] In *Prekaj*, cited above, Justice Russell decided that the RPD's finding that the applicants had not rebutted the presumption of state protection was completely unreasonable because the member had simply selected the documents and evidence that supported this finding, setting aside probative evidence, such as the Responses to Information Requests (RIRs)

[September 2006] establishing unequivocally that "Albanian authorities were unable to protect victims of blood feuds" and that "blood feuds continue, regardless of improvements, because the Albanian state remains somewhat ineffective". Moreover, in the same case, the RPD had "completely ignore[d] . . . a May 2008 [IRB Issue Paper]" that made it very clear that, notwithstanding legislative changes and government initiatives, the Government of Albania "is unable to deal with blood feuds effectively or offer significant protection to citizens. Albanian legislations have acknowledged that in Albania there is an absence of the rule of law."

[29] In *Sokol*, cited above, Justice O'Keefe had to consider an RPD decision holding that the claimant for refugee protection did not need Canada's protection because there existed adequate state protection in Albania. My colleague set aside this decision for two reasons:

a. The RPD failed to analyze evidence that would have rebutted the presumption of state protection;

b. The RPD failed to make a proper analysis of the documentary evidence, for example, (1) by relying on statistics in the UN DOS documentation without referring to the significant evidence calling into question the accuracy of those statistics and the ability of local officials to combat the blood feuds and, above all, (2) by attaching little significance to the IRB Issue Paper on blood feuds in Albania, failing to consider the IRB's statements that there is little the Albanian authorities have been able to do to combat the problem.

> The paper also stated that even those individuals who are arrested for murder often deny the murder was related to a blood feud in order to receive a lesser sentence, but upon release are often killed. The paper even addressed directly the inability of the police in the applicant's region to protect potential blood feud victims.

c. "The Board similarly failed to analyze a letter from the Nationwide Reconciliation Committee (NRC), the NGO which seeks to resolve blood feuds by reconciliation and negotiation, attesting in detail to the course of the blood feud between the Sterbyci and Lisi families. The letter was signed by the NRC chair and stated that the police and Albanian government have no adequate means to protect families in revenge and blood feud situations."

[30] Justice O'Keefe held that, in his opinion, "the Board was required to have some regard in its written reasons to the significant body of evidence showing a lack of adequate protection in Albania. As a result, the Board made an error in failing to assess this evidence. Consequently, the judicial review must be allowed for this reason."

[31] In *Precectaj*, cited above, Justice Mandamin had to consider a decision of the RPD in which the issue was a discrepancy between the evidence provided by Gjin Marku and that in the National Documentation Package. According to the judge,

> **10** The Panel considered the evidence provided by Gjin Marku, an Albanian who is recognized as knowledgeable on the subject of blood feuds. The Panel rejected Mr. Marku's evidence in a large part because of his hyperbolic statement that, "…there is no justice. There is no State. There is no rule of law. And people find no place where they can seek protection" was contradicted by the documentation confirming Albania was a parliamentary democracy under the control of civilian authorities who in turn had control of the security forces.
>
> **11** The Panel found Albania is a parliamentary democracy with an independent judiciary. Furthermore, the country's criminal code specifically condemns murder committed in pursuit of a family feud. It also criminalizes "serious threats of revenge or blood feud to a person or a minor [causing them] to stay isolated…" that

> offence is punishable by fine or imprisonment up to the three years.
>
> **12** The Panel preferred the analysis on Albanian blood feuds found in reports by the US Department of State and the UK Border Agency over Mr. Marku's testimony. It found the Albanian government set up a special crimes court and a witness protection program. It found there have been prosecutions of blood feud crimes and stated:
>
> > There is no evidence to indicate that individual Albanians fearing the actions of those seeking to carry out a blood feud cannot access protection from the Albanian police and pursue these through legal mechanisms that have been set up to deal with blood feuds.

[32] Justice Mandamin set aside the RPD's decision because it failed to consider statements supporting the claimant's contentions in the very documentary evidence on which it relies: (1) the US DOS, while acknowledging conflicting evidence with respect to the number of blood feuds, confirms their existence in Albania.

[33] As for the Guidance Note of the UK Home Office, Justice Mandamin takes the following view:

> **32** The UK Operational Guidance Note specifies it must be read in conjunction with the [UK] COI Service Albania Country of Origin. This latter document makes reference the issues paper prepared by the Research Directorate of the Immigration and Refugee Board, *Issue Paper, Albania: Blood Feuds*, May 2008. The Panel makes no mention of this document although it is part of the country documentation before it. What is significant in the IRP Issue paper is the degree to which it appears to substantiate the principal Applicant's story.

[34] Justice Mandamin analyzed the IRB Issue Paper on blood feuds in Albania and held that although "the Albanian government denounced blood feuds . . . it is unable to deal with them

effectively" and that Albanian legislators have acknowledged that there is an absence of the rule of law in Albania. He concluded as follows:

> **35** It seems to me these are important details in a Report that should be explicitly considered by a Panel asking itself about the adequacy of state protection in Albania for victims of a blood feud. Failure to consider the IRB Issue Paper lends credence to the Applicants' claim the Panel has selectively reviewed the evidence. While the Panel need not accept the information in a report by its own Research Directorate, it ought to consider information relevant to an applicant's claim since assessing a claim in light of documentary evidence is part of its area of expertise. However, I need not decide if this omission by the Panel is a reviewable error having regard to the second flaw in the Panel's decision.

[35] In my view, the second flaw identified by Justice Mandamin is of critical importance. The RPD had recognized that "the police in Albania may have difficulties in dealing with blood feuds. There may be individual cases where the level of protection offered is, in practice, insufficient and there were some local cases of police corruption." He found that

> **43** The nature of blood feuds in Albania requires the Panel to assess the Applicant's claim on an individualized basis in order to determine whether adequate police protection is available to her and her children. In this case, the Panel made a generalized conclusion without regard to the evidence that relates to the Applicants' individual circumstances.

C. *Conclusions*

[36] This Court finds for several reasons that the RPD's decision in this case must be set aside as my colleagues have done.

[37] First, the RPD did not consider all the evidence before it, as it failed to consider the evidence that strongly contradicted its findings on the availability of state protection for victims

of a blood feud. For example, in section 5 of the May 2008 IRB Issue Paper on blood feuds, the following is written under the heading “State protection”:

a. In Section 5.1, “[t]he extent of protection offered by the Albanian government to citizens who are involved in blood feuds is ‘rather little’ and ‘marginal’” and that while the government is not in favour of blood feuds, “it is unable to deal with blood feuds effectively or offer significant protection to affected citizens.”
b. In Section 5.1.1, under the heading, “Effectiveness of laws and prosecution”: “there is corruption in the Albanian judiciary” and “one reason for the prevalence of the blood feud was the failure of the judicial system to operate appropriately”. The Issue Paper quotes the Albanian Ambassador to Bulgaria, who refers to “people’s mistrust of state institutions and their disappointment with the implementation of laws”. Also, “certain pieces of legislation regarding blood feuds have not been implemented”.
c. In Section 5.1.2 on the effectiveness of prosecutions, the IRB cites one stakeholder’s statement that relatively few blood feud cases go to court and that any sentences that are imposed are “derisory”, although another expert noted that people involved in blood feud murders receive harsher sentences than those who commit other types of murder but end up being released from jail after only two or three, or at most, five, years.
d. In Section 5.1.4 (“Police”), the IRB cites Mr. Marku, who writes that among the legal agents of the state, police managers are “the only ones” who have supported reconciliation activities and the CNR and that the Director General of the State

> Police urged the police, prosecutors, local authorities, NGOs and members of the community to join together to outlaw blood feuds.

e. In Section 5.2, entitled “Protection provided by reconciliation committees”, the IRB Issue Paper again cites Mr. Marku:

> > In contrast, Marku listed a number of protection-related services that reconciliation committees offer: hiding confined people and securing safe transit to other locations, securing a temporary permit from a damaged family for a confined person to move to another location, advocating for the rights of people involved in blood feuds in the courts of hosting countries, protecting the location of persons hosted in other countries, and escorting persons internally in Albania in times of emergency (7 Dec. 2007).

[38] I agree with my colleagues in the above-cited decisions that all of this contradictory evidence should have been considered and analyzed, contradictory evidence arising not only from the Issue Paper but also within the US DOS documentation and the Guidance Note.

[39] It has been consistently held that the availability of state protection must be assessed on a case-by-case basis (see *Mendoza v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 119 at para. 33(3)). I would add that the Guidance Note of the UK Home Office states at paragraph 1.3 that each claim for refugee protection must be considered individually because “there may be individual cases where the level of protection offered is, in practice, insufficient. The level of protection should be assessed on a case by case basis taking into account what the claimant did to seek protection and what response was received”.

[40] In Section 3.6.10 of the Guidance Note, the UK Home Office refers to two English decisions that are useful as persuasive authority:

> **KOCI [2003] EWCA Civ 1507** The Court of Appeal found that whilst each case should be considered on its individual merits and conditions in Albania at the relevant time, the evidence at that time pointed towards protection being inadequate on the evidence of the individual case, "not merely as a generality in such cases but actually in his own specific case".
>
> **TB (Blood feud – Relevant Risk Factors) Albania CG [2004] UKIAT 00158** The tribunal found that a number of factors will be relevant in determining the nature of the risk on return:
> (a) whether the dispute can be characterized as a "blood feud" at all;
> (b) even if it can, then the extent to which its origins and development (if any) are to be regarded by Albanian society as falling within the classic principles of the Kanun;
> (c) the history of the feud, including the notoriety of the original killings and the numbers killed;
> (d) the past and likely future attitude of the police and other authorities;
> (e) the degree of commitment shown by the opposing family;
> (f) the time that has elapsed since the killing;
> (g) the ability of the opposing family to locate the alleged victim anywhere in Albania
> (h) that person's profile as a potential target for the blood feud; and
> (i) the prospects for eliminating the feud, whether by recourse to the payment of money, a reconciliation organization or otherwise.
>
> The tribunal noted that whilst it is plainly too early to say that any potential victim of a blood feud of the "classic type" can now look to the authorities for a sufficiency of protection….the governments initiatives are particularly likely to make themselves felt, in terms of institutional attitudes within Tirana itself.

[41] The decision in *Koci v. Secretary of State for the Home Department* was rendered by the Court of Appeal of England and Wales (Civil Division). I believe it would be useful here to reproduce paragraph 35 of the reasons of Lord Justice Keen and paragraph 37 of those of Lord Justice Longmore:

> **35.** I do emphasize that every case has to be considered on its merits. I do not for one moment suggest that every Albanian who reaches these shores and has been involved at some state in a blood feud, however remotely or indirectly, is automatically to be regarded as someone who cannot be removed without breaching his Article 2 or Article 3 rights. The outcome, as always, will depend on the details of his case and on the evidence about conditions in Albania at that time. I am dealing in this judgment only with the instant case. However, in this instant case I conclude that the IAT was wrong to interfere with the findings made by the adjudicator. He was not plainly wrong in the conclusions which he reached. Having arrived, as I do, at that conclusion, it is unnecessary to deal with the various other arguments canvassed on behalf of the appellant in writing. I, for my part, would allow this appeal.
>
> **37.** Mr Eicke for the Secretary of State submitted that if this appeal were to be allowed, asylum would have to be granted to all applicants who plausibly claimed that they were the subject of a blood feud. I cannot accept that submission. The facts of cases in which a blood feud is asserted will all be different. It is for the adjudicator in each case to decide whether the State can afford sufficiency of protection in all the individual circumstances of the case before him. Important circumstances might include, for example, the notoriety or the publicity of the original killing; the time which has elapsed since the last killing; what the applicant did during that time; and the number of those who have been killed on either of the sides which constitute the blood feud.

[42] I am of the view that the RPD failed to consider certain relevant factors related to the applicants' individual circumstances:

a. The origins of the conflict, which began in 2004 and continues to this day;

b. The fact that Uncle Nazmi, the only male of the Murati family currently remaining in Albania, has not left his home in ten years on account of his health;

c. The influence of the Hoxha family, originally from northern Albania, and the impact of this influence on the police and authorities given the extent of

corruption in Albania and their ability to find the applicants if they were to return to Albania;

d. The fact that Sami's wife is still in contact with the CNR regarding the possibility of a reconciliation, in which the Hoxhas still refuse to participate.

[43] I find that the RPD's decision regarding the existence of an IFA in Albania cannot stand. The RPD's finding that the Hoxha family would have neither the means nor the will to seek out and find the applicants is not based on any evidence and contradicts the evidence on file. This is a very dangerous family with a history of blood feuds. The documentary evidence also establishes that those engaged in a blood feud have a long reach and may, in some circumstances, seek out their victims in various European countries (see the transcript of Mr. Marku's testimony, Tribunal Record, page 308).

[44] To conclude, I note several other deficiencies in the RPD's decision:

a. The RPD states that the evidence required to rebut the presumption that a state is capable of protecting its citizens is proportional to the degree of democracy achieved by the state in question, but it does not discuss the level of democracy in Albania at all. This Court's judgments on the level of democracy in Albania indicate that it is developing and that the European Union requires significant progress before it will admit it as a member state.

b. The RPD erred in describing the CNR and the police as opposing entities. The Albanian Parliament recognizes the CNR. The police and the CNR are partners (Tribunal Record, page 313), the CNR contacted the police in this case (Tribunal

Record, page 325), and the police were aware of what was happening in this case (Tribunal Record, page 328) as Mr. Marku himself had contacted the police and the National Information Service. They were aware of the situation (Tribunal Record, page 328).

c. The RPD unjustly called into question Mr. Marku's testimony on the issue of whether the police accepted complaints. Mr. Marku never said that the Albanian police did not accept complaints from the victims of blood feuds. He testified that the police did not accept complaints by the CNR regarding victims of blood feuds because it was up to the families to make their own formal complaints to the police (Tribunal Record, page 326).

d. An important element of Mr. Marku's testimony is the phenomenon of permanent confinement (living permanently in hiding) experienced by victims of blood feuds in Albania, which counsel for the Muratis submitted to the RPD as evidence of the Albanian state's inability to protect victims of blood feuds. The RPD does not discuss this point.

[45] For all of these reasons, I allow the application for judicial review.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that this application for judicial review is allowed, the RPD decision is set aside and the applicants' claim for refugee protection is referred for redetermination by a differently constituted panel. No serious question of general importance was proposed.

"François Lemieux"
Judge

Certified true translation
Francie Gow, BCL, LLB

Federal Court  Cour fédérale

FEDERAL COURT

SOLICITORS OF RECORD

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