

**THE HIGH COURT
JUDICIAL REVIEW**

[2022] IEHC 100
Record No. 2021/108JR

BETWEEN:-

XS AND JT

APPLICANTS

- AND -

**THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR
JUSTICE AND EQUALITY**

RESPONDENTS

Judgment of Mr Justice Cian Ferriter dated this 23rd day of February, 2022

Introduction

1. In these judicial review proceedings, the applicants seek an order of *certiorari* quashing certain specified paragraphs of the decision of the first named respondent (“IPAT” or “the Tribunal”) dated 30th November, 2020 (“the Decision”) in which the Tribunal affirmed the recommendation of the International Protection Officer (“IPO”) that the applicants should be given neither a refugee declaration nor a subsidiary protection declaration. If successful in that application, they also seek an order remitting the appeal for fresh consideration by a different member of IPAT.

Extension of Time

2. The applicants received the impugned Decision on 14th December, 2020. Under s. 5 of the Illegal Immigrants (Trafficking) Act, 2000, as amended, the period within which to bring a judicial review of the decision was 28 days. That period expired on 11th January, 2021. The applicants’ leave papers were lodged on 17th February, 2021 and the leave application was moved on 22nd February, 2021. The applicants were, accordingly, some five weeks out of time. The applicants made an application to me at the hearing of the judicial review for an extension of time.
3. The applicants’ solicitor, Sean Mulvihill, swore an affidavit setting out why it was contended that there was good and sufficient reason for extending the period. Mr. Mulvihill averred to difficulties relating to the Covid-19 restrictions, technical difficulties in taking instructions remotely and in convening consultations remotely with counsel prior to the institution of proceedings.
4. The respondents submitted that the evidence tendered by Mr. Mulvihill was sparse and that, in particular, it did not disclose evidence that the applicants had formed a view within the time period that they intended to challenge the Decision. It was submitted that the lapse of time was insufficiently explained, and, therefore, not sufficiently excusable, in the circumstances.
5. In my view, Mr Mulvihill’s averments both explain the delay and afford a justifiable excuse for the delay. The Decision was issued just prior to Christmas, 2020. The time limit for the lodging of judicial review expired during the most severe period of the Covid lockdown restrictions (being January, 2021). I am mindful that parties such as the applicants, who were residing in direct provision at the time, were hit particularly hard by the time limit

requirements, in light of the technological limitations often experienced in their situation. Here those technological difficulties extended to the applicants' legal team.

6. In my view, it is appropriate to grant the applicants the extension of time sought. In arriving at my decision to grant an extension of time, I have had regard to the explanation provided on affidavit, and also to the significant prejudice that would accrue to the applicants in the event that they were denied an opportunity to have their case argued in circumstances where the High Court accepted that they had raised arguable grounds of challenge to a decision which if implemented without the benefit of a challenge could stand, on their case, to have very adverse consequences for them.
7. I will turn, therefore, to the substantive issues in the case.

Background

8. The applicants are Albanian nationals who are partners and engaged to be married. They arrived in the State in November, 2016 and sought international protection on the basis that they would face persecution if returned to Albania arising from their involvement in a blood feud in Albania.
9. The first named applicant's claim before the Tribunal was that she had been obliged, at age sixteen, to become engaged to a 32-year-old local man in Albania without any say on her part. She claimed, and the Tribunal accepted, that her father and brother were physically and psychologically violent towards her when she expressed a desire to end her engagement to the older local man, following her discovery that he had been involved in serious crime.
10. The Tribunal accepted the first named applicant's evidence that she had attempted suicide in February, 2011 on account of the pressure she was under to remain engaged against her will. The Tribunal further accepted that the first named applicant's father and brother were physically and psychologically violent towards her when she told them of her plan to become engaged to the second named applicant and that, thereafter, she received threats from the man to whom she had originally been engaged against her will by phone on a regular basis and was harassed by that man's nephews.
11. The Tribunal accepted that, in August, 2016, the second named applicant was insulted and physically attacked by associates of that man and that, in September, 2016, when the applicants were in Italy, they had received an anonymous threatening letter, likely to have emanated from the man to whom the first named applicant was original engaged against her will, in which there was a threat to kill the first named applicant.
12. The Tribunal accepted that the applicants found themselves in a blood feud which constituted a particular social group such as to have a nexus with a ground of fear of persecution recognised by the Convention. The Tribunal also accepted that the first named applicant's claim came within the rubric of "*violence against women*" and also had a nexus with a Convention ground as such.

13. The Tribunal, in its Decision, found that there was a reasonable chance that, if the applicants were returned to Albania, they would face a well-founded fear of harm at the hands of the man to whom the first named applicant had been engaged against her will and that there was a reasonable chance that, if they were returned to Albania, the applicants would face a well-founded fear of harm at the hands of the first named applicants' family and that the kind of harm feared by the applicants, if returned to Albania, would constitute persecution.
14. The applicants' challenge in these judicial review proceedings lies in how the Tribunal thereafter determined whether there would be sufficient state protection for their feared persecution.
15. It is common case that the proper legal test for State protection is "*as to whether the country concerned provides reasonable protection in practical terms*": Clarke J. (as he then was) in *Idakheua v. The Refugee Appeals Tribunal* [2005] IEHC 150, citing *Noone v. Secretary of State for the Home Department* (Unreported, CA, 6th December, 2000). It is clear from s.31 International Protection Act, 2015 that state protection includes the operating of an effective legal system for the detection, prosecution and punishment of acts constituting persecution.
16. In light of the applicant's challenge, it is necessary next to describe in a little detail how the Tribunal addressed the question of state protection.

The Decision

17. The Tribunal, in its Decision, approached its analysis of the state protection issue as follows. It commenced its analysis by stating (at para. 5.10) that:

"In assessing the availability of state protection, it must be considered whether reasonable steps are taken by the authorities in Albania to prevent the kind of persecution at the centre of the appellants' claims. This includes an assessment of whether Albania operates an effective legal system for the detection, prosecution and punishment of acts constituting persecution."

It can be seen that, in this paragraph, the Tribunal correctly asks itself the relevant legal question on the state prosecution issue.

18. The Tribunal then noted that the law in Albania criminalises murder for blood feuds specifically and also criminalises incitement in relation to blood feuds. The Tribunal then cited at some length from the EASO COI Report Albania, November, 2016 addressing issues as to the effectiveness of the Albanian police which, in essence, while noting that law enforcement capabilities continued to improve, also stated that problems still remained with police enforcement of the law.
19. The Tribunal then stated (fairly, I believe) at para. 5.13 of its Decision as follows:

"The Tribunal regards this COI as presenting a mixed picture. On the one hand, difficulties within the Albanian police force are identified. However, the COI also details government measures that address these difficulties." (emphasis added)

20. The Tribunal then quoted from the US Department of State, 2019 Report on Albania which was then described (again, fairly) at para. 5.15 of the Decision as follows:

"The Tribunal regards this COI as presenting a mixed picture. On the one hand, difficulties within the Albanian police force are identified. However, the COI also details government measures that address these difficulties." (emphasis added)

21. The Tribunal then made reference, at para. 5.16 of its Decision, to what has been termed the "Cedoca Report" (the full title of which is "*The 'Office of the Commissioner General for Refugees and Stateless Persons, Albania: Blood Feuds in Contemporary Albania: Characterisation, Prevalence and Response by the State, 29th June 2017 (Belgium)'*" Report) stating as follows:-

"The 'Office of the Commissioner General for Refugees and Stateless Persons, Albania: Blood Feuds in Contemporary Albania: Characterisation, Prevalence and Response by the State, 29th June 2017 (Belgium)', report is particularly helpful, as it addresses state protection in the context of blood feuds and the issue of bribery. Given its specificity to blood feuds, together with its compliance with best practice standards on COI, the Tribunal prefers this authority to the more general authorities which do not have a focus on blood feuds."

22. I should note at this point that I cannot see any difficulty in law with the approach adopted by the Tribunal here; it was clearly reasonably open to the Tribunal to prefer this COI source over other more general sources, in light of the applicants' claim, given that the focus of the Cedoca Report was specifically on blood feuds in Albania and the response of the state authorities in Albania to same, and given its date (June, 2017) which was not long after the applicants had arrived in Ireland seeking protection on the basis that they were fleeing from a blood feud in Albania.

23. Over the next number of pages and paragraphs of the Decision, the Tribunal quotes from various sections of the Cedoca Report.

24. The Tribunal then expresses itself as follows, at para. 5.22 of the Decision:-

"While the CGRS-CEDOCA report expresses some misgivings and identifies some shortcomings in the approach of the Albanian police, the Tribunal takes the view that, looked at in the round, the report is indicative of effective state protection in Albania in the context of blood feuds."

25. As counsel for the applicants put it at the hearing before me, the nub of their challenge in these proceedings relates to this paragraph of the Decision. In short, the applicants contend that it was unsustainable for the Tribunal to take the view that the report was indicative of effective state protection in Albania in the context of blood feuds in light of

the actual contents of that report. Indeed, the applicants contend that the fact that the Tribunal itself correctly identified that the report expressed misgivings and shortcomings in the approach of the Albanian police meant that the Tribunal was compelled to hold, in the circumstances, that the legal requirement of it being demonstrated that the country concerned “*provides reasonable protection in practical terms*” was simply not met. I will return to this argument below.

26. The Tribunal went on to quote from another COI source, the UK Home Office Report on Blood Feuds in Albania dated February, 2020 and concluded as follows, at para. 5.24 of the Decision, in relation to that report:-

“Within the body of the UK Home Office report, specifically at pp. 38-48, the COI also demonstrates that, while there are some problems in the Albanian police force, including corruption and lack of resources, concrete structures and measures have been put in place to ameliorate such problems.”

27. Separately, the Tribunal addressed the argument made by the first named applicant that, in addition to being in a blood feud type situation, she was also at risk on account of her gender. The Tribunal quoted from a UK Home Office Report on Domestic Abuse and Violence against Women dated December, 2018 and stated as follows at para. 5.26:-

“In the first place, the Tribunal notes that the first named appellant never actually lived in a domestic situation with Fatmir [the local man to whom she had been engaged against her will]. Furthermore, should she return to Albania, she would return as her own family unit with her husband and son and would have no need to live with either her own family or Fatmir. Nevertheless, the Tribunal does accept that the facts of her claim do fall under the broader heading of 'violence against women' in Albania. However, even when the claim is considered in this way, rather than as a 'blood feud' situation (which is also a reasonable characterisation of the claim), the Tribunal finds the material set out at [5.25] to be broadly indicative of state protection for those at risk of violence in Albania on account of their female gender.”

28. Under the heading “*State Protection and the Appellants’ Accounts*”, the Tribunal states as follows at para. 5.29:-

“It is a feature of the appellants’ claims that they at no stage reported any of their respective difficulties to the police in Albania. When asked why they failed to do this, they both cited problems with corruption in the Albanian police force and a belief that the police force there would simply not help them. In circumstances where the appellants never reported their difficulties to the Albanian police, it is not possible to gauge what the reaction of the Albanian police force would have been to any such reports.”

29. The Tribunal then concluded on state protection as follows:-

"Taking everything into consideration, including the individual factors in the appellants' claims, the Tribunal is satisfied by recent, pertinent, COI that reasonable steps are taken by the authorities in Albania to prevent the kind of persecution at the centre of the appellants' claims. Therefore, the Tribunal concludes that adequate state protection would be available to the appellants should they be returned to Albania."

30. The analysis on adequacy of state protection in the context of the conclusion that the applicants should not be given refugee declarations, was expressly adopted and applied at para. 7.4 of the Decision in the context of a finding that the applicants had not made out grounds for subsidiary protection.

The parties' submissions

31. In admirably focused submissions, counsel for the applicants that the Tribunal's decision did not set out clearly why, having held that the COI was a 'mixed picture', it preferred one set of COI over another, particularly when the Tribunal had accepted all material aspects of the applicants' claims and where credibility was not at issue. She contended that the Tribunal erred in law in failing to give reasons why it preferred some evidence in the Cedoca Report over other evidence in the same report which pulled in a different direction. It was emphasised that an applicant must be able to understand the basis upon which the decision was reached, but that this was not possible here.
32. It was emphasised that, on the facts of the case here, the Tribunal had – correctly – accepted that the applicants had overcome the high hurdle of demonstrating that the kind of harm they feared if returned to Albania would constitute persecution and in demonstrating that substantial grounds had been shown that they faced "a real risk of serious harm" in Albania. It was submitted that there was a "broken trajectory" thereafter in terms of the Tribunal's reasoning as to how, notwithstanding the applicants' accepted individual position that they faced a real risk of serious harm in Albania as a result of a blood feud, the Tribunal nonetheless held that the applicants were not entitled to protection because adequate state protection would be available in Albania.
33. It was emphasised that their account (including their account that they had not reported their difficulties to the police in Albania) was in fact consistent with the experience of "latency" as set out in the Cedoca Report, i.e. an unwillingness of those caught up in blood feuds in Albania, very often, to report matters to the police or the authorities generally and that the Tribunal erred in effectively holding that matter against them in analysing state protection by stating that (at para. 5.29, set out at paragraph 28 above) it was not possible to gauge what the reaction of the Albanian police would have been to their difficulties because they did not report such difficulties.
34. The respondents, for their part, submitted that the Tribunal and reasoned, perfectly within jurisdiction, as to why it preferred the Cedoca report COI evidence over other more general COI sources, and, critically, found that "taken in the round" the contents of the

Cedoca report did support the view that there was effective state protection for victims of blood feuds in Albania. It was submitted that it was not appropriate to invite the court to effectively substitute its own view for that of the decision maker in relation to the weight to be given to the contents of the relevant COI. It was contended that the decision in fact represented a model of careful and reasoned decision making and that it was unimpeachable as a matter of law.

Discussion

35. In my view, the Tribunal's conclusion, at para. 5.30, that adequate state protection would be available to the applicants should they be returned to Albania on the basis that *"taking everything into consideration, including the individual factors in the applicants' claims, the Tribunal is satisfied by recent, pertinent COI that reasonable steps are taken by the authorities in Albania to prevent the kind of persecution at the centre of the applicants' claims"*, was arrived at lawfully and was a conclusion validly open to the Tribunal in light of the evidence before it.
36. The structure of the regime for international protection is such that in order to qualify for protection it is not sufficient for an applicant to establish that they have a well-founded fear of persecution on one of the Convention grounds without more; it is necessary also for the applicant to demonstrate that state protection for the type of persecution feared by them would not be available if returned to their country of origin. In addressing that question, the authorities make clear that there is a presumption of state protection, absent a situation of complete breakdown of the State apparatus: see decision of Birmingham J. (as he then was) in *ABO v. Minister for Justice, Equality and Law Reform* [2008] IEHC 191. The onus rests with the applicants to rebut the presumption of state protection. Albania has been designated by the Minister for Justice and Equality as a safe country of origin pursuant to s. 72 of the 2015 Act. The onus was, therefore, on the applicants to submit *"serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances"* in accordance with the provisions of s. 33 of the 2015 Act.
37. In my view, the Tribunal acted perfectly lawfully in, first, looking at general COI in relation to the adequacy of police functioning in Albania, being the EASO COI Report, 2016 (quoted at para. 5.12 of the Decision), described as presenting a *"mixed picture"* by the Tribunal (at para. 5.13), and the US Department of State COI Report for 2019 (quoted at para. 5.14 of the Decision), also described *"as presenting a mixed picture"* (at para. 5.15 of the Decision) but thereafter stating that it preferred the Cedoca Report *"given its specificity to blood feuds, together with its compliance with best practice standards of COI"* (at para. 5.16 of the Decision) to the more general authorities (such as the EASO and US State Department reports) *"which do not have a focus on blood feuds"*. This is a cogently reasoned approach and demonstrates no error of law.
38. In my view, counsel for the respondent is correct in his submission that the conclusion of the Tribunal on the Cedoca Report at para. 5.22 of the Decision was clearly to the effect that *"the report is indicative of effective State protection in Albania in the context of blood feuds"* when *"looked at in the round"* notwithstanding that the report expressed some

misgivings and identified some shortcomings on the approach of the Albanian police i.e. it was a finding on the facts of the Tribunal's view as to the availability of state protection in Albania for blood feuds. In my view, that was a conclusion which was open to the Tribunal to reach in light of the contents of the Cedoca Report as a whole, which supported the view that Albania in recent years does operate an effective legal system for the detection, prosecution and punishment of blood feud-related crime.

39. It is well-settled that it is not the function of the Court on a judicial review to substitute its own view of the COI for that of the decision-maker (see *OAA v. Refugee Appeals Tribunal* [2007] IEHC 169 at para. 4.5). In addition to the view arrived at on the Cedoca Report, the Tribunal went on to cite from material in the UK Home Office COI Report on Blood Feuds in Albania (February, 2020) which, as cited by the Tribunal in its Decision, stated that "*effective protection for a person in blood feud is available in general*" as being more supportive than not on the state protection issue. The Tribunal then addressed relevant COI relating to violence against women (to address the first named applicant's contention that she was also at risk on account of her gender) and found (at para. 5.26 of the Decision) that the COI material was "*broadly indicative of State protection for those at risk of violence in Albania on account of their female gender*".
40. In respect of the reference by the Tribunal (at para 5.29) to the fact that the applicants had not reported their concerns to the police in Albania at any point, in my view, the Tribunal was simply noting that there was no evidence of the applicants having reported their difficulties to the police and the police e.g. thereafter having failed to take any action, which may have been more supportive of their position. I do not read the Tribunal's Decision as holding this matter against the applicants on the question of State protection.
41. In the circumstances, in my view, the Tribunal in its Decision approached the state protection issue on the basis of asking itself the correct legal question, and thereafter arrived at a decision on the state protection issue which was fully reasoned and clearly open to it on the basis of the COI cited and relied upon by it.

Conclusion

42. In the circumstances, I refuse the reliefs sought.