

**IMMIGRATION APPEAL TRIBUNAL**

Heard at Field House  
On: 8 May 2003  
Prepared: 11 May 2003

29/10/2003

Before

**Mr Andrew Jordan**  
**Mr P Rogers JP**

Between:

(a citizen of Serbia and Montenegro)

Claimant

and

Secretary of State

Respondent

For the claimant: Ms J. Alexander, counsel  
For the Secretary of State: Mr G. Elk, HOPO

**DETERMINATION AND REASONS**

1. The appellant is a national of Serbia and Montenegro, formerly the Federal Republic of Yugoslavia, and is a Gorani from Kosovo. He appeals against the decision of an adjudicator, Mr NJ Osborne, following a hearing on 6 January 2003 dismissing both his asylum and his human rights claims.
2. The claimant was born in the village of Gorono Sello (Gorno Selo) to the south east of Prizren in Kosovo. The claimant comes from a family of Gorani. His father was conscripted in to the Serbian army and took part in the hostilities between Serbs and Albanians until the intervention of the NATO-led forces in June 1999. In his evidence, the claimant spoke of an incident that took place on 20 July 2002 when three Albanians forced their way into his home and attacked him, apparently in search of his father. A somewhat similar incident was repeated on the following day, save that the claimant was threatened by having a gun pointed at his head.

3. The adjudicator rejected the claimant's evidence of these two incidents at paragraph 10.12 of the determination. He gave two reasons for doing so. The first was because he did not believe that the claimant was a minor as he claimed to be. He reached that conclusion in paragraph 10.3 of the determination:

*"The appellant produced no documentary evidence to support his date of birth. I do not consider that he is under the age of 18 years. From looking at the appellant and from hearing him speak, I conclude that the appellant is over the age of 18 years. The appellant has at each interview consistently maintained his date of birth. I consider that this damages the appellant's credibility. I am not prepared to give the appellant the benefit of the doubt and do not deal with him as a minor."*

4. There will be cases where it is clear that an appellant is over the age of 18. This will be at its most obvious when the person is of advanced years. It cannot, therefore, be said that an adjudicator must never form his own judgment as to the age of persons appearing before him. That said, it is extremely hazardous for anybody to speak with certainty about the exact age of a person, accurate to, say, two or three years. Adjudicators should not set themselves up as experts on such matters. Whilst the adjudicator had the benefit of hearing the claimant give his evidence, which the Tribunal did not, the general appearance of the claimant was not such as to entitle the adjudicator to find that the claimant was lying about his age. Even if the claimant was not telling the truth on this issue, it did not entitle the adjudicator to use that fact as one of the principal grounds for rejecting his evidence.
5. The second reason for disbelieving the claimant was that he had given evidence that the Albanians targeted males rather than females. In paragraph 10.8 of the determination, the adjudicator stated that nowhere in the objective material was it even suggested that Gorani males are at greater risk than females of the same ethnicity. He concluded:

*"If that were the case then I am sure it would be so stated. This too damages the credibility of the appellant."*

6. The absence of a reference to a particular factor in the objective material does not establish that the claimant must be telling a lie. It is for the adjudicator to make his own assessment. There does not appear to us to be anything inherently unlikely in incidents of racial violence for the aggressors to select other males as their targets. No doubt there will be cases, as in the present case, where each family member, both male and female, was subjected to attack or abuse. Nevertheless, the adjudicator's conclusion that the claimant must have been lying when he said the Albanians targeted males is not

sustainable merely because there is no reference to this in the background material.

7. If the adjudicator reached the wrong conclusion in rejecting the claimant's evidence, the claim falls to be considered on the basis of two incidents, taking place within the space of 48 hours, in which the claimant and his family were subjected to abuse and violence by ethnic Albanians. It was these incidents that caused the claimant to flee in July 2002. Accordingly, the issue raised in this appeal is whether Gorani and, in particular, young Gorani males, are persecuted or subjected to violence by non-state agents in circumstances where the authorities offer no effective protection.
8. The adjudicator dealt with the position of Gorani in paragraphs 10.6 and 10.7 of his determination. He referred to the fact that the incidence of violence against the minorities had decreased significantly and that there was notable security improvement during 2001. He specifically referred to paragraph 5.28 of the October 2002 CIPU Report. The adjudicator accepted that the UNHCR considers that Gorani face security risks but relied upon paragraph 5.43 of the CIPU report that UNMIK police statistics show no murders of Gorani in the year 2000. On that basis, the adjudicator concluded that the claimant had not established a claim either under the Refugee Convention or under the ECHR.
9. There is a wealth of material dealing with the position of Gorani, who like the Bosniaks, are Muslim Slavs. At the commencement of the hearing before the Tribunal, Ms Alexander, who appeared on behalf of the claimant, accepted that there was nothing in the claimant's case that was exceptional. Although there was evidence that the claimant's father had been conscripted into the Serbian forces and had fought against the ethnic Albanians in the Kosovo conflict, she accepted that most Gorani were perceived to have sided with the Serbs during the conflict. Accordingly, this particular claimant was not placed at any exceptional risk by reason of his father's involvement. Ethnic Albanians in the area would have assumed that all Gorani were in the same situation. Ms Alexander argued the appeal on the basis that all young male Gorani, at least, are in a similar position to that of the claimant and are at risk of treatment that amounts to persecution or a violation of their Article 3 human rights.
10. I was referred to the Tribunal decision of Seferi (00/TH/02247) decided in September 2000. It goes without saying that circumstances have changed to a considerable extent since that appeal was decided. In that case, the appellant and his family were also Gorani. The Tribunal upheld the decision of the adjudicator that it was not possible for the appellant to return to the Dragash area. In reaching that conclusion, it relied (see paragraph 10) upon the UNHCR Report of 2000 that warned:

*“Lack of security and freedom of movement remain the fundamental problems affecting minority communities in Kosovo. Criminal activity remains unacceptably high, with a continued shortfall in unmixed police staffing and the lack of a properly functioning and impartial judicial system.”*

11. Given the passage of time since that decision was made, the Tribunal cannot attach much weight to the Tribunal’s findings in Seferi as an indication of the current position and we propose to deal with this appeal by considering more recent information.
12. The April 2003 CIPU assessment dealing with the position of Serbia and Montenegro records in paragraph 6.28 that ethnic Albanians make up approximately 90% of the population of Kosovo. It is apparent that, following the war, there was a very high level of violence directed at ethnic minorities, like the Gorani, who were seen as having collaborated with the Yugoslav oppression. Most of the perpetrators were ethnic Albanians seeking revenge or pursuing the aim of a wholly Albanian state. This caused a large number of minority communities to flee and those who remained are mostly concentrated in mono-ethnic areas. The number of incidents of violence against minorities, according to paragraph 6.29 of the report, has decreased significantly since the period following the conflict, with a notable improvement in the security situation during the year 2001. This improvement continued in 2002 and, although there is still a low background level of inter-ethnic violence, most crime is now considered to be economically motivated. There was, however, in the year 2000, evidence that one Gorani was murdered. No such evidence exists for the years 2001 and 2002.
13. In a report to the UN Security Council dated 17 July 2002, the Secretary-General noted:

*“Although difficult to assess over a short period of time, the security situation of the minority communities seems to have improved. A year ago, attacks and intimidation of minority communities were still considered systematic; now they have decreased significantly and are considered more random. Freedom of movement has also improved...Increasingly Kosovo Serbs now drive unescorted to Kosovo Albanian areas, although there are still cases of Kosovo Serbs cars being stoned.”*

14. According to Paragraph 6.32 of the CIPU Report, the UNHCR noted in January 2003 that it detected a continued improvement in the situation of minorities between April and October 2002, evidenced by a decline in serious security incidents which allow the gradual improvement in freedom of movement. In spite of these obvious improvements, the UNHCR has noted that minority communities continue to face varying degrees of harassment, intimidation and provocation, as well as limited freedom of movement. There have also been occasional incidents of

serious violence. Unemployment is high amongst ethnic minorities. Conditions vary from one part of the country to another. For example, it is noted in paragraph 6.34 of the CIPU report that in the area of Prizren, there is a long tradition of mutual acceptance among different communities and Serbian, Bosniak and Turkish languages are spoken relatively freely.

15. It appears that Gorani and the Bosniak experience a similar position. The former are considered in paragraphs 6.70 to 6.73 of the CIPU report; the latter, at paragraphs 6.64 to 6.69.

*6.71 Like Bosniaks, the Gorani community are Muslim Slavs, and experience similar difficulties. The Gorani are a distinct group from Bosniaks, with their own language, though like Bosniak language this is similar to Serbian. The overall Gorani population is estimated at 10,000 – 12,000, most of whom live in the Gora region of Kosovo, though there are small communities in Pristina and Mitrovica also. The Gora region comprises 18 geographically linked villages within Dragash municipality inhabited by Gorani. The region was largely unaffected by the conflict in terms of damage to housing.*

*6.72 As with Bosniaks, Gorani has been closely associated with Serbs because of their shared language and culture and have suffered violent attacks, harassment and discrimination. The risk of being mistaken for a Serb when using their language has restricted freedom of movement outside their local area and inhibited equal access to social services and economic opportunities.*

*6.73 However, as with Bosniaks, the security situation for Gorani was stable during 2002 with no reported serious security incidents. There have been no murders of Gorani since the year 2000. There have also been significant improvements in freedom of movement and the ability to use their own language, particularly in the Prizren region. The Gorani are likely to be at greater risk of harassment and intimidation in some other areas of Kosovo, such as Ferizaj/Urosevac. Approximately half the KPS [Kosovo Police Service] officers in Dragash are Gorani.*

16. The latter point addresses one of the problems that was identified by the Tribunal in Seferi, namely “a continued shortfall in unmixed police staffing.”
17. UNHCR issued a statement in April 2002 dealing with its *Position on the Continued Protection Needs of Individuals from Kosovo*. The position of Minorities was considered in Part II:

*10. Minorities continued to experience varying degrees of threat to their life and personal integrity. They also endure significant restrictions on their freedom of movement that, in turn, limit their access to basic services, reconstruction of residential*

*property, property restitution procedures, employment and other economic activity is essential for their survival. Severe restrictions in the use of their language, religion or their cultural traditions is a problem for some minorities.*

11. *Improvements in the general situation in Kosovo are having the gradual impact on some minority communities in specific locations, and some have managed to secure a limited degree of tolerance within certain areas. This does not imply that the risk of serious human rights violations has disappeared. The violent, attention-grabbing incidents are interspersed by periods of calm which can lead to a false sense of security or erroneous interpretations that circumstances have fundamentally changed. It is important to know that, even during such "quiet" periods, minorities continued to endure less visible forms of mistreatment that erode the communities will to remain and hence continue to cause displacement or impede sustainable returns.*
  12. *Furthermore, the continued presence of minority communities in specific locations does not guarantee the safety of returnees of the same group. In the current environment, long-term absence may be the cause of suspicion leading to protection problems upon return. Efforts to improve the situation of minorities which are beginning to take hold need to gain momentum before general conditions which are conducive to return in safety and dignity are created.*
  14. *UNHCR stresses that minority returns should take place on a strictly voluntarily basis and based on fully informed decisions of the members of this community. Any such voluntary return movements should be properly co-ordinated and re-integration should be supported through assistance to ensure sustainability. Minorities should not be forced, compelled or induced to return to Kosovo.*
18. Gorani are specifically considered in paragraphs 22 to 23 of the 2002 UNHCR statement. When compared with the Bosniaks, certain sectors of the Gorani community are perceived to have closer links with the ethnic Serbs and this has created stronger tensions between the Gorani and Kosovo Albanian communities. Most Gorani inhabit a clearly defined geographical area, Goran/Dragash. Because it is relatively isolated, it is said to be vulnerable to what the UNHCR describe as "security-related incidents". However, relative to other minority communities, Gorani enjoy some freedom of movement within their area of origin and in Prizren. Nevertheless, reports continue to indicate harassment of Gorani if they travel outside this area particularly if they use their own language as this may lead them to be mistaken for ethnic Serbs. The UNHCR statement concludes:

*"The Gorani face discrimination in accessing economic opportunities and social services because of their ethnic background and the associated issue of the language barrier. A*

*combination of security concerns and uncertainty over their longer-term economic and social viability has compelled many Gorani to leave Kosovo.”*

19. More recently, UNHCR and OSCE have produced *The Ninth Assessment of Ethnic Minorities in Kosovo* covering the period from September 2001 to April 2002. The position of the Gorani is described in paragraphs 218-220. This repeats much of what has been set out above. In addition, the Assessment gives, by way of an example, a typical incident of harassment in October 2001 in which a vehicle belonging to a Gorani was unjustly impounded by the KPS. It is said that, as a result of incidents such as this, the community experiences a crisis of confidence with regard to its future viability in Kosovo.
20. In May 2002, the Kosovan Information Project<sup>1</sup> provided information about the Dragash municipality. Before the war, 41 percent of the municipality was Gorani. In November 1999, this had reduced by about 650 people to 40 percent. By March 2000, however, the Gorani community had reduced to 28 percent.
21. In January 2003, the UNHCR published a letter entitled *UNHCR Position on the Continued Protection Needs of Individuals from Kosovo* dealing with, amongst other groups, the Bosniaks and Gorani. See paragraphs 6 to 8. The letter begins by reporting that there were improvements on the general situation in Kosovo during the previous year. The security situation for the Bosniaks has improved and has become more stable, albeit some still face intimidation, harassment, discrimination and occasional violence. The position of the Gorani community may also be considered relatively stable (save for the Gjilan region), particularly in the rural communities of the Dragash municipality. There is a problem with jobs and access to social services with the effect that there is a “*small scale but steady departure of Gorani families from Kosovo.*” See paragraph 7. The UNHCR advise that the overall and general improvement in conditions favours the voluntary return to these locations. In addition:

*“Alternatives to voluntary repatriation may be examined for members of those groups who have no protection or compelling humanitarian needs requiring prolongation of their stay in the asylum countries, as an option of last resort...financial and development assistance would be required to underpin sustainable returns.”*

The letter draws upon the January 2003 *Update* referred to in greater detail in the following paragraph.

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<sup>1</sup>SCIS Kosovo (KIP) is an extension project of the Source Country Information Systems, jointly implemented by ICMPD and IOM and the report was prepared with the support of the governments of Austria, Denmark, German, Liechtenstein, Norway, Switzerland and the United Kingdom.

22. The *Update of the Situation of Roma Ashkaeli Egyptian and Gorani*, prepared by the UNHCR in 2003 repeats the information in the

Kosovan Information Report that the current Gorani population in Dragash municipality, estimated at 11,000, is located in 18 villages as well as Dragash town and represents about 30 percent of the total population of the municipality. As has been stated elsewhere, the Gorani tend to enjoy freedom of movement within this area and up to Prizren town, although some prefer to travel in groups for safety reasons. A few Gorani live in Prizren town, and enjoy good relations with other communities there, probably because they speak Albanian. Gorani travel to Serbia using their own collective transport and there are no reports of harassment in relation to these journeys. Within Dragash, inter-ethnic relations with Albanians are slowly relaxing. At present, Gorani do not face security threats. The last ethnically motivated violence against Gorani was on 10 July 2001 when four Kosovo Albanians attempted to stab a Gorani male, at which time there were also frequent explosions in or near Gorani properties. Gorani now enjoy access to public services in Dragash and secondary care at the Prizren hospital. Leaders do not indicate any instances of discrimination in public services. The most serious threat to the survival of the Gorani is unemployment. The *Update* reported that there seemed to be no progress on job-creation or income-generation. The economy of Dragash is virtually non-existent. The reluctance of Gorani to assimilate linguistically further consolidates their isolation, and affects their economic sustainability. There is still an uncomfortable relationship between the Albanians and Gorani in Dragash where the Gorani are marginalised by the municipal government. Discrimination in employment remains a principal source of ethnic tension.

23. In April 2003, the Home Office published its Operational Guidance Note. When considering this material, the Tribunal exercised proper caution. Since the assessment is made by the respondent in asylum appeals, its objectivity is not guaranteed. Nevertheless, there is no reason to doubt that the compilers of background information upon which Operational Guidance Notes is based attempt to remain objective.

*2.3 Fearing revenge attacks, more than half of the 200,000 population of Serbs and Roma left the province in the following months. High levels of violence ensued against those Serbs, Roma and other ethnic minorities who remained in Kosovo. With the removal of the Serb / Yugoslav forces there was no longer any fear of persecution for most of the ethnic Albanian population. But it was clear that members of all ethnic minority groups would be at risk from ethnic Albanian extremists if they returned.*

*2.5 Levels of violence against ethnic minorities have fallen considerably during the last two years. There has been a reduction in inter-ethnic tensions, and between them, KFOR, UNMIK police and the Kosovo Police Service, are able to provide a sufficiency of protection. While discrimination,*

harassment, limitations on freedom of movement and occasional incidents of violence continue, the overall situation has improved to the extent that UNMIK and UNHCR are now encouraging the voluntary return of ethnic minorities in carefully organised schemes. However, these organisations remain opposed to enforced returns of ethnic minorities, which they believe could jeopardise the delicate reintegration process.

### 3.13 Bosniaks (Muslim Slavs)

#### *Treatment*

3.13.1 Bosniaks speak Serbian as their first language, but unlike Serbs they follow Islam as their religion. There has in the past been persecution of Bosniaks by ethnic Albanians because of their cultural and linguistic links with Serbs and it has sometimes been dangerous for them to use their language in public. However, Bosniaks generally appear to be tolerated by both ethnic Albanian and Serb communities and their security situation has always been more favourable than that of Roma. One Bosniak was murdered in 2001 (compared to 9 in 2000) and one was murdered in 2002, though it is not clear whether the incident was ethnically motivated.

3.13.2 The security situation for Bosniaks improved significantly during the last two years. UNHCR considers their position to have stabilised, with no reported serious security incidents during the six months to January 2003. In general, UNMIK police and KFOR provide a sufficiency of protection for Bosniaks and it will not be appropriate to grant asylum solely because an applicant is a member of this ethnic group.

3.13.3 Discrimination and harassment persist against Bosniaks. But the cumulative effect of these factors alone will not usually amount to persecution or torture or inhuman or degrading treatment/punishment.

#### *Sufficiency of Protection*

3.13.4 In general, there is now a sufficiency of protection for Bosniaks in Kosovo.

#### *Internal Flight/Relocation*

3.13.5 There is sufficiency of protection for Bosniaks throughout Kosovo. However, levels of harassment and discrimination vary. Internal relocation may an option be for Bosniaks who come from areas outside of Prizren and Peja/Pec regions (see above) where most Bosniaks reside and experience fewer difficulties.

#### *Conclusion*

3.13.6 Most cases from Bosniaks will not qualify for asylum or HP and will be clearly unfounded. A grant of asylum would only be appropriate in exceptional cases, where an individual was able to show that he/she remained at risk because of specific factors related to his/her particular personal history and that because of specific factors related to him/her there was not a sufficiency of protection available and internal flight was not an option.

### 3.14 Gorani

#### *Treatment*

3.14.1 *Like Bosniaks, the Gorani community are Muslim Slavs and have experienced similar difficulties in the past. They are a separate group from Bosniaks, with their own distinct language, which is similar to Serbian but with significant differences. Most Gorani live in the Gora region, which comprises 18 geographically linked villages within Dragash / Dragas municipality.*

3.14.2 *As with other ethnic minority groups, the situation for Gorani has improved significantly in the last two years. There were no murders of Gorani during the last two years and UNHCR reports that there have been no attacks on this community during the six months to January 2003.*

3.14.3 *In general, UNMIK police and KFOR provide a sufficiency of protection for Gorani and it will not be appropriate to grant asylum solely because an applicant is a member of this ethnic group. Discrimination and harassment persist against Goranis, but the cumulative effect of these facts alone will not usually amount to persecution or torture or inhuman or degrading treatment/punishment.*

*Sufficiency of protection.*

3.14.4 *In general, there is now a sufficiency of protection for Gorani in Kosovo.*

#### *Internal Flight/ Relocation*

3.14.5 *Although there is sufficiency of protection for RAEs through Kosovo, levels of harassment and discrimination vary. The option of internal relocation may be a relevant option for any Gorani individuals who live in isolation from their ethnic community. In such cases, relocation to Prizren or Dragash municipalities, where there are large Gorani communities, may be considered.*

*Conclusion.*

3.14.6 *Given the general improvements in the security situation for Gorani, most cases will not qualify for asylum or HP and can be certified as clearly unfounded. A grant of asylum would only be appropriate in exceptional cases, where an individual was able to show that he/ she remained at risk because of specific factors related to his/her particular personal history and that because of specific factors related to him/her there was not a sufficiency of protection available and internal flight was not an option.*

23. The claimant comes from Gorono Sello, (Gorno Selo), to the southeast of Prizren. It is not one of the 38 villages of the Dragash municipality, which lies to the south of Prizren. It is not, therefore, part of the Gora area, principally inhabited by the Gorani. In his statement, the claimant described the population in Gorono Sello as consisting of more than 50% Gorani. The Serbs have now departed. There is both a church and a mosque. The claimant was taught in both Gorani and

Serbian but does not speak Albanian. The claimant has an aunt in Mushnikov village, with whom the claimant's mother is now staying.

24. The background information does not provide sufficient detail about the position in Gorono Sello or Mushnikov. In view of the preponderance of evidence that Gorani who do not speak Albanian are, for the most part, safer in their own communities, we have not been able to form a view as to whether the community in which the claimant lived offers him an appropriate level of protection. In the absence of that material, we are not satisfied that it does. The background material has, for obvious reasons, concentrated on the Gora. It is apparent that this is an isolated area but one which was not, fortunately, seriously damaged during the conflict. The Gorani community, whilst greatly reduced, remains a substantial minority there. The most serious problems faced by Gorani are economic ones, particularly high unemployment. Inter-ethnic tension has reduced and, whilst incidents of violence against Gorani have been documented, the level of violence is now low. The risk cannot be categorised as a reasonable likelihood of harm.

25. For these reasons, we consider that the claimant's return to the Dragash area will offer him appropriate security. The material we have set out above describes a relatively self-sufficient community that has access to public services and healthcare. The discrimination faced by the Gorani does not establish a level of severity sufficient to breach the claimant's rights under Article 3 of the ECHR. The Tribunal has also considered the claimant's return to Prizren but, because he does not speak Albanian, the risk he faces there will be appreciably greater and we do not consider that there is a reasonable likelihood of his integrating within the Gorani community there without risk of harm from the Albanian community.

26. The conclusion we have reached is that Ms Alexander's submission that all Gorani are persecuted in Kosovo cannot be sustained on the evidence. In particular, we consider that the Gorani community in the Gora region is not at risk sufficient to engage either the Refugee Convention or the Human Rights Convention. Further, there is no reason to suggest that the claimant, as a young male, falls into an exceptional category of risk. It is accepted that his father's involvement with the Serbian army does not, in itself, intensify that risk. For these reasons, we consider that the adjudicator reached the correct conclusion in dismissing both the claimant's asylum appeal and his claim based on a violation of his human rights.

27. Finally, we should mention that, as we are not satisfied that the adjudicator was permitted to reject the claimant's evidence that he was born on 22 June 1985, the claimant will not attain his 18<sup>th</sup> birthday until next month. It is not, therefore, necessary to consider the claimant's position as a minor as a separate aspect of this determination because there is no reasonable prospect of the claimant being returned whilst still a minor.

Decision: Appeal dismissed.

Andrew Jordan  
Vice President  
11 May 2003