

**IN THE IMMIGRATION APPEAL TRIBUNAL**

**Decision no. LH RQ (Risk-Albanians-Presevo Valley) Serbia and Montenegro**

**CG [2002] UKIAT 06359**

Appeals nos. HX 13793-02

HX 20140-02

Heard: 29.11.2002

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Sent out: 31/01/2003

**IMMIGRATION AND ASYLUM ACTS 1971-99**

Before:

**John Freeman** (chairman)

**Michael Shrimpton** (legal member) and

**Mr FT Jamieson**

Between:

**Luan HAXHIU,**  
appellant

and:

**Secretary of State for the Home Department,**  
respondent

and between:

**Robert QELEPOSHI,**  
appellant

and:

**Secretary of State for the Home Department,**  
respondent

**DECISION ON APPEAL**

Mr M Chatwin (counsel instructed by Lawrence Lupin) for Mr Haxhiu [H]

Mr P Farrell (solicitor, Glasgow) for Mr Qeleposhi [Q]

Miss D Prentice for the respondent

These are appeals from decisions of adjudicators (Miss ME Lewis, sitting at Croydon; and Mr F Pieri, sitting at Glasgow, both on 12 June), dismissing asylum and human rights appeals by Albanian citizens of the Preševo valley in Serbia, from removal directions as illegal entrants, on 8 September and 25 August 2001. Leave was given on the basis that there were conflicting decisions of the Tribunal

which needed to be resolved. Whether that is in fact the case we shall have to consider: whatever view we take on that, our concern is with whether either appellant would now face any real risk on return in the present state of affairs in Preševo valley. As the assessment of that is the main issue in, and common to both cases, we heard them together.

2. H gave his former address as (apparently) a village near Preševo (Presheve in Albanian); Q a street in the town itself. H left after being stabbed by Serb police in December 1999: it is not clear what brought things to a head then, but he says they had been accusing him of being an Albanian nationalist, over a period of time. Q was driven out by the Serbs for refusing to collaborate with them in December 2000. Neither adjudicator had any significant reservations about either appellant's credibility, and we are prepared to accept that what happened to each of them amounted to Refugee Convention persecution when it happened, given the then régime in Serbia.
3. Mr Chatwin's case for H was that, while there is now no general lack of protection for Albanians in Preševo, the seriousness of what happened to him leaves concerns on that score capable of amounting to a real risk on return. Mr Farrell for Q on the other hand did not make that concession about the general state of affairs, but asked us to consider whether the risks seen by the Tribunal in the earlier cases before us still persist.
4. The first of those cases was **Gjemali [01/TH/02883]**, a decision of Professor DC Jackson and a lay panel, by a majority, sitting on 9 October 2001. The next was **Caushi: not [01/TH/01411]**, a decision on Kosovo, with which Mr Farrell had provided us, no doubt because he had failed to give the citations in his own grounds of appeal; but **[2002] UKIAT 00393**, which we found for ourselves and distributed to everyone. This was a decision of Mackey VP and a lay panel, sitting on 25 January 2002. Meanwhile there had been **Osmani [2002] UKIAT 00136**, decided by Fox VP, sitting with Mr MSW Hoyle on 2 January: we shall come back to that in due course.
5. The Tribunal in **Gjemali** had before them the CIPU report of March 2001, with a bulletin of 3 July that year; the others apparently the CIPU report of the following October. There is no mention of any specific Home Office bulletin in **Caushi**; however in **Osmani** they also had one whose date they do not mention, but apparently the forerunner of the one of 16 September 2002, before us with attached letters from the Foreign and Commonwealth Office and UNHCR: we have the CIPU report of October 2002.
6. The *ratio* of the majority in **Gjemali** appears as follows:

*22. It is arguable that the risk of persecution in this case is by a State agency, the police or local authority. It is far more likely, however, that the persecution would be through the actions and attitudes of non-state agents. In that context the question arises as to whether there would be a sufficiency of protection. It will be apparent from the majority view of the facts that we do not believe, given the history of the area of the Presevo Valley, that that has been established. We have little doubt that in time it may be established. However, the elements of the National Plan make it clear that certain fundamental issues such as the participation of ethnic Albanians in government and business are being addressed. Central to this case, however, as we have said, is the creation of a multi-ethnic*

*police force and the lack of consistency of the need for such a force and the view of the CIPU Bulletin that any harassment suffered by ethnic Albanians could be countered by protection from the police. In our view, therefore, approaching the present in the light of the past, the evidence does not establish the necessary sufficiency of protection.*

7. This was the ratio of the Tribunal in **Caushi**:

*20. In reaching our conclusions in relation to Issue (a) we have been guided by the decision of Court of Appeal in **Demikaya** and have thus carefully considered whether there has been, in the Preshevo area in Serbia, "a major change in circumstances... that makes prospective persecution unlikely." We have noted individualised past persecution in relation to this appellant and his family. The country information, as is set down in the CIPU assessment of October 2001 and in order reports, definitely indicates an improving situation in Southern Serbia. However, against this must be balanced comments also made in various reports which counsel has aptly termed a "blueprint for change". Country information indicates continuing risks to ethnic Serbs and the possibility that serious crimes could reoccur. We find that the conclusions on this issue reached by the Adjudicator that the likelihood of future persecution is reduced by the measures in place were insufficient and he did not go on to consider whether there was a real risk for this appellant on return.*

*21. After carefully balancing the country information, and all the evidence before us we consider, possibly extending the benefit of the doubt, that there has not yet been a major change in circumstances to the extent that any prospective fear of persecution by Serb groups, such as those that attacked this appellant and his family in December 2000, is below the level of a real risk nor that there is a sufficiency of protection yet available by the Serbian authorities.*

They go on to indicate that they reached this conclusion "possibly at this stage only by a small margin".

8. The Tribunal in **Osmani** on the other hand reviewed the progress made since the (Albanian separatist) UCPMB guerrillas accepted an amnesty in May 2001, the giving and progressive implementation of undertakings by the Serb authorities since, including the establishment of a multi-ethnic police force. They based their decision on the Home Office report before them, summarized as follows:

*25. The report notes that the positive developments in the Presevo area have been hailed by the international community as a great success for the Serb administrator and the local ethnic Albanian leaders.*

*26. It does state that there is a potential for conflict to flare up again. However, that is balanced by the willingness of all parties to engage in negotiation and the Serb authorities' commitment to addressing the needs of the local population mark a radical change of approach and give cause for optimism. This concludes that ethnic Albanians are unlikely to be at risk of persecution from the Serb authorities in the current circumstances. It notes that it is possible that there may be some resentment towards ethnic Albanians among the local Serb civilians. However,*

*ethnic Albanians are in the great majority in the Presevo area and do not suffer any incidents of harassment or intimidation and they would have adequate redress with the local police force.*

9. The view of the Tribunal in **Gjemali**, sitting only a few months after the amnesty and at a time when the necessary changes were only getting under way, took a view on the effectiveness of protection in Preševo which may be summarized as “not yet, but with little doubt in time”. The Tribunal in **Caushi** said in effect “not yet, with the benefit of the doubt, and possibly by this stage only by a small margin”. We are not concerned with whether they were right or wrong on the facts as they saw them when they sat; but with whether they indicate any reasonable likelihood of continuing failure of protection now. As Mr Chatwin conceded, **Osmani** has represented the continuing positive view of the Tribunal to date.
10. Mr Farrell did not refer us to any further official material, beyond those cases and what the Home Office had put in (referred to at 5 above): he did put two Internet items before us, to which we shall return. Mr Chatwin put in the Amnesty International and State Department reports for 2001, as well as a press release of 11 July 2002, announcing a new “briefing paper” from Human Rights Watch; but the passages to which he referred us relate to Serbia generally, and what is said to be continuing impunity for past war crimes there. As he conceded, the police force in Preševo in particular has been the subject of specific international attention. There is said (at § 6.33 of the CIPU report) to be a new right-wing group in Serbia called OBRAZ, which is suspected of violence towards minorities; but there is nothing to suggest it is active in Preševo. The passage on Preševo in the Human Rights Watch report for 2001 (at p 4/13 of the copy before us), which appears in H’s bundle, refers to positive steps taken by the Belgrade authorities, and a general return to normal (including the homecoming of 4,000 out of 15,000 Albanian displaced persons) even as of May – July that year.
11. At § 6.59 of the current (October 2002) CIPU report, immediately before the passage quoted in **Osmani** at § 25, we noted the following sentence:

*Although they have expressed unease about the continued presence of 163 policemen whom they claim served in the Kosovo war, the multi ethnic police force has received wide approval among the ethnic Albanian population.*

We put that passage to Mr Chatwin, who could do no more than repeat his general submission, that there had as yet been no complete change. As he pointed out, H’s fear had been of two specific officers. Apart from the material about Serbia generally, to which we have already referred, he could put forward no reason why any repetition of their previous behaviour towards H should be tolerated by the Preševo authorities in the present climate.

12. Mr Farrell’s Internet items do not show any date of origin, but only 11 November 2002 as the date of downloading. Both come from a site [www.presheva.com](http://www.presheva.com), about which we can tell no more than that their Albanian language shows they originate from that community. One is headed “*An Albanian is physically attacked and severely insulted at a police checkout in the village of Mucibaba*”: it gives Radio Presheva as the source. There is no date for the incident. Mr Farrell

referred us to the last paragraph, about returning displaced persons being regularly harassed by border police, as well as police patrols along the road.

13. The other item is headed “*Nagipi Arifi requests international pressure for a reduction of police forces*”. The translated text contains no date at all; but, though none of us reads Albanian, we could not fail to notice that the original does include, twice, the date of “21 maj 2001”. While that is no doubt the well-known date of the UCPMB amnesty, its omission to say the least does nothing for our confidence in the translators (Global Language Services Limited) who should not be used again by any practitioners in this field. Another, minor point is that the name of the subject, as shown by the original, is Nagip Arifi: he is described as the first Albanian prefect of Bujanovc [Bujanovac in Serbian], and is clearly a senior administrator in the area. He notes complaints that

*In the villages along the Kosovan border in the Presheva region, there are still a high number of police forces and special units of the Yugoslav army, which are frightening the local residents*

He expresses the wish, to which he says the government [no doubt in Belgrade] has not responded, that these forces should be withdrawn.

14. **Conclusions** Mr Farrell’s client (Q) comes from Preševo itself, and not the Kosovo border area at all; nor did Mr Chatwin suggest that H came from that area. UNHCR in their letter of 5 September (attached to the Home Office bulletin referred to at 5 above) express the view of their Belgrade office that, given proper arrangements, including travel documents, “... individuals from Preševo being returned through Belgrade should not face any undue hardships”, though such returns should be implemented with caution: as the Home Office note in their bulletin, there are political reasons for not returning such persons by way of Kosovo, and it is clear that this route will not be used.
15. There is nothing to show that the police on the border (so far as it can be called one) between Serbia proper and Preševo present any kind of a risk, nor that either of these appellants would have to go anywhere near the Kosovo border. We do not see any real risk on return from the border police in either of these cases; nor is it clear that appellants who came from near the Kosovo border, but would not be returned across it, would be at any real risk either. Future cases involving such persons would have to be decided on their own facts (including any internal flight alternative), and we hope rather more reliably translated and sourced information than the Internet reports before us.
16. So far as the general level of protection in Preševo is concerned, it is clear from the passage quoted at 11 above that the majority Albanian population [see CIPU report § 6.49] have given the new multi-ethnic police force their vote of confidence, though they have the same reservations as apparently do people elsewhere in Serbia about those who served in the Kosovo war. They also gave their approval to the new dispensation following the May 2001 amnesty, by returning in large numbers within the next few months [see 10]. We have no doubt whatsoever that Mr Chatwin was entirely right in making the concession he did. While he did the best he could for H in referring us to all conceivably relevant material, and in emphasizing the serious nature of what had happened to him in December 1999, we have no doubt that H would now face no real risk on return of

any kind. The climate which allowed the police to stab him with impunity back then has clearly changed beyond recognition.

17. As for Q, the incident of which he complains was less serious, and also happened before the changes. We do not think Mr Farrell greatly helped his case by referring us to decisions from a time when the effect of those changes had not become so apparent as it now is; but at least that has enabled us to lay those decisions firmly to rest. **Gjemali** and **Caushi** should no longer be cited as any guide to the current situation in Preševo; so long as things there go on their present course, the evidence we have reviewed for ourselves shows that the approach in **Osmani** is the one to be followed.

**Appeals dismissed**

**John Freeman** (chairman)