Appeal No: HX/55044/2001

FC (Article3- Medical Facilities-Psychiatric) Kosovo CG [2002] UKIAT 04608

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing: 21st August 2002
Date Determination notified:
.....3 October 2002.....

Before:

Mr C M G Ockelton (Deputy President)
Mr A R Mackey
Mr R Baines JP

Between:

FERIZ CELA

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The Appellant is a citizen of the Federal Republic of Yugoslavia from Kosovo. He appeals, with leave, against the determination of an Adjudicator, Mr J R L G Varcoe CMG, dismissing his appeal against the decision of the Respondent on 19th April 2001 to give directions for his removal as an illegal entrant. Before us today he is represented by Miss Fielden instructed by S Osman Solicitors and the Respondent has been represented by Mr Blundell. We have heard submissions from Miss Fielden and have not needed to call on Mr Blundell.

2. The Appellant's claim depends, to an extent, on his history and, in particular, his history of ill-treatment by the Serbs in Kosovo. The Adjudicator decided that the Appellant was not entitled to status as a refugee and also decided that the Appellant's removal would breach no Article of the European Convention on Human Rights. The Appeal to us is primarily based on Article 8, with reference also to Article 3.

3. The basis of Miss Fielden's submissions is largely a medical report prepared by Dr Cohen and dated 20th December 2001, following the doctor's examination of the Appellant on 11th December. It is a comprehensive report, which appears (with one reservation to which we shall need to refer) to be entirely fair and balanced, and, like the Adjudicator, we regard it as reliable. It records that the Appellant had, at the time of the doctor's examination, psychiatric problems of some severity. The diagnosis is that the Appellant was suffering from a severe depressive episode (ICD 10 classification F32.2). The doctor states in his report as follows:

> "The seriousness of the Appellant's disorder is such that he requires immediate treatment. In addition to antidepressant medication, he would also benefit from a period of inpatient treatment in a psychiatric hospital, as he is experiencing thoughts of self harm, and there is a risk that he may act on them. In addition, he has been using alcohol as a form of self-medication and I am concerned about the adverse effects – physical, psychological and social – that excessive drinking might have on his health and well-being.
>
> The consequences of him failing to receive treatment is that his depressive symptoms are likely to intensify. This will undoubtedly impact negatively on his marriage and his relationship with his children and may lead to him taking his life.
>
> As far as I could ascertain, such treatment is not available in Kosovo.
>
> If he is deported, this is also likely to have a negative impact on his mental state with further deterioration of his mood."

That last sentence is the only one about which we have reservations. It may be right, but the doctor does not give any indication that in reaching that judgement, he has weighed up matters such as the return of the Appellant to his own country surrounded by his own countrymen and, of course, people who speak his own language and are used to his culture. Be that as it may, the account given by the doctor of the Appellant's condition at the time of that report is clearly not a happy one.

4. Ms Fielden points out that the Adjudicator found as a fact that it would be impossible for the Appellant to receive inpatient psychiatric treatment in Kosovo. The question then is whether that fact of itself would mean that the Appellant's removal to Kosovo would be a breach of Article 8. It might be so, if the report was such as to indicate that the Appellant needed inpatient treatment. As we read the report, however, it does not make that suggestion. It indicates that treatment is needed. It clearly indicates that medication is needed, although the type of medication is not specified. Inpatient treatment is described as only an additional benefit. We do not read the report as indicating that, at its date, the Appellant needed inpatient psychiatric treatment. What is incidentally clear is that there is

no evidence that, in the period following the report, the Appellant received inpatient psychiatric treatment.

5. As Miss Fielden has very frankly conceded, she has a difficulty in the date of the report. Because of the terms of s77(3) and (4) of the 1999 Act, in considering claims under Article 8 of the European Convention on Human Rights, we are concerned with the facts as they were at the date of the decision. That, as we have said, was in April 2001, some eight months before the doctor saw the Appellant. The doctor sets out the Appellant's history in the course of his report. There does not appear to be any suggestion that the Appellant's medical state had begun at the time of the difficulties which he suffered at the hands of the Serbs. On the contrary, the only matter of history relating to the Appellant's condition which is recorded in the report is that the Appellant himself had noticed a deterioration in his mental state in the past 18 months: that is to say, approximately in the period from June 2000 until December 2001. In our view, there is simply nothing in this report which would enable us to say that the Appellant's medical condition was of any particular nature at the date of the decision. There is simply no evidence of what the Appellant needed in terms of any condition that he may have had at the date of the decision. It follows that a claim based on Article 8 as a result of his mental state at that date is doomed to failure.

6. That is not the end of the matter because, so far as Article 8 is concerned, the Appellant also relies on his family links. He has brothers and sisters who are here, and who, we are told (it is fair to say in a rather vague fashion) have some status here. We do not know what their status is and we do not know whether they have any indefinite right to remain here rather than being returned themselves to Kosovo when some period of leave expires. The Appellant also has close family here including his wife and his two children, one of whom was born here. The family, that is to say, the husband, wife and the children, ought, no doubt, to be staying or moving together. The siblings have been relied on by the Appellant's wife in helping her to look after the Appellant. That was the position at the date of the hearing before the Adjudicator in March 2002, but again there is no basis for saying that there was, between the Appellant and his siblings, in April 2001, a relationship which was so close that it ought not to be infringed by the Appellant's removal.

7. Nothing that has been put before us suggests that either the Appellant's wife or his children are themselves not liable to removal and it follows that, so far as Article 8 is concerned as a whole, the Appellant's family ties here are not such as to prevent his removal. That is to say that, although removing him without them would infringe his family life, the removal of the family

would not interfere with either the private or family life of any of them. Insofar as there were any interference, we think that the Appellant's medical condition (if there could be any hypothesis about what it was at the date of the decision) would not amount to any reason counteracting the need to maintain immigration control.

8. That leaves only Article 3. There is a suggestion in the grounds that the Appellant's inability to obtain medical treatment would amount itself to a breach of Article 3 if he were returned to Kosovo. In our view, there is nothing in that argument and it is fair to say that Miss Fielden has not pressed it. For completeness, however, we should refer to Bensaid. That was a case of a claimant who was, it is right to say, very much more severely mentally disturbed than this Appellant, and the Court appears to have taken the view that nevertheless his removal to his own country would not infringe Article 3. So far as we are concerned in this appeal, the Appellant will no doubt be in Kosovo in a situation which is not as advantageous to his health as the United Kingdom has been over the last few months, but his removal to his own country does not thereby amount to a breach of Article 3.

9. For those reasons, his appeal is dismissed.

10. Before parting from this case, we would like to say this. This is an appeal where the evidence has not enabled the Appellant to establish his case because, as we have said, the medical evidence does not go to the date of the decision. We offer no criticism for that. It is a feature of the legislation that requires us to look at the date of the decision and we suspect that, in a case such as this, it would be impossible or nearly impossible for a doctor to look back a considerable period and say with any degree of reliability or responsibility what the individual's medical condition would have been on that date. We are not entitled to look at the medical condition of the Appellant at the date of the hearing before the Adjudicator or at the date of the hearing before us, except in so far as that condition was predictable at the date of the decision and, as we have said, there is no basis for any conclusion in that area.

11. However, we are told by Dr Cohen that in December the Appellant needed treatment. We do not know what treatment he has had, and we do not know whether it has enabled the Appellant's medical condition to improve. As a result of our decision today, the Appellant and his family can, we apprehend, properly be removed to Kosovo, but we strongly urge the Secretary of State not to remove the Appellant unless he is entirely satisfied that the medical emergency which was referred to in Dr Cohen's report is now firmly a thing of the past.

C M G OCKELTON
DEPUTY PRESIDENT