

# Albanian blood feuds and asylum: the current challenges

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## Albanian blood feuds and asylum: current challenges

This short paper outlines the current challenges faced by Albanians who are seeking asylum on the basis that they are affected by a blood feud. It identifies the issues which legal practitioners and other professionals may need to consider.

**This is provided for information purposes only and is not legal advice. Anyone who is in need of immigration assistance should seek professional advice from a qualified solicitor, barrister or immigration adviser who is authorised to provide immigration advice and services.**

### **The Country Guidance**

The current Upper Tribunal Country Guidance on Albanian blood feuds is the case of EH (blood feuds) Albania CG [2012] UKUT 348 (IAC). The headnote to this case reads:

- “1. While there remain a number of active blood feuds in Albania, they are few and declining. There are a small number of deaths annually arising from those feuds and a small number of adults and children living in self-confinement for protection. Government programmes to educate self-confined children exist but very few children are involved in them.
2. The existence of a ‘modern blood feud’ is not established: Kanun blood feuds have always allowed for the possibility of pre-emptive killing by a dominant clan.
3. The Albanian state has taken steps to improve state protection, but in areas where Kanun law predominates (particularly in northern Albania) those steps do not yet provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the individual claimant. Internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence, and commitment to prosecution of the feud by the aggressor clan.
4. International protection under the Refugee Convention, Qualification Directive or Articles 2 and 3 ECHR is not available to an appellant who is willing and intends to commit a revenge killing on return to his country of origin, by reference to that intention.
5. Where there is an active feud affecting an individual and self-confinement is the only option, that person will normally qualify for Refugee status.
6. In determining whether an active blood feud exists, the fact-finding Tribunal should consider:
  - (i) the history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud;
  - (ii) the length of time since the last death and the relationship of the last person killed to the appellant;
  - (iii) the ability of members of the aggressor clan to locate the appellant if returned to another part of Albania; and
  - (iv) the past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek

protection from the Albanian authorities.

7. In order to establish that there is an active blood feud affecting him personally, an appellant must produce satisfactory individual evidence of its existence in relation to him. In particular, the appellant must establish:

(i) his profile as a potential target of the feud identified and which family carried out the most recent killing; and

(ii) whether the appellant has been, or other members of his family have been, or are currently, in self-confinement within Albania.

8. Attestation letters from Albanian non-governmental organisations should not in general be regarded as reliable evidence of the existence of a feud.

9. Documents originating from the Albanian courts, police or prosecution service, if genuine, may assist in establishing the existence of a blood feud at the date of the document relied upon, subject to the test of reliability set out in *A v Secretary of State for the Home Department (Pakistan)* [2002] UKIAT 00439, [2002] Imm A R 318 (Tanveer Ahmed).

10. Unless factual, prompt and consistent, Albanian press reports will add little or no evidential weight in considering whether a feud exists.

11. Whether the feud continues and what the attitude of the aggressor clan to its pursuit may be will remain questions of fact to be determined by the fact-finding Tribunal.

12. This guidance replaces that contained in TB (Blood feuds – relevant risk factors) Albania CG [2004] UKIAT 000158.”

It can be seen that, although this guidance establishes a relatively high threshold for proving the existence of a blood feud, it also accepts that in areas where Kanun law predominates, particularly in the north of the country, **the state does not yet provide a sufficiency of protection against an active feud**. This can perhaps be read together with the subsequent observation in TD and AD (trafficked women) Albania CG [2016] UKUT 92 (IAC) at [111] to the effect that migration from northern to southern Albania has transplanted conservative northern social mores into the south.<sup>1</sup>

The determination goes on to make the following important observations about internal relocation at [70]:

“70. Internal relocation will be effective to protect an appellant only where the risk does not extend beyond the appellant's local area and he is unlikely to be traced in the rest of Albania by the aggressor clan. A crucial factor in establishing whether internal relocation is a real possibility is the geographical and political reach of the aggressor clan: where that clan has government connections, locally or more widely, the requirement to transfer civil registration to a new area, as set out at 2.4.4 above, would appear to obviate the possibility of 'disappearing' in another part of the

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<sup>1</sup> “... It might be thought that the increased migration from the countryside to the cities might lead to a weakening in such belief systems, as extended families leave the land and break down into smaller, more independent units. Surprisingly we were shown no evidence to that effect, and in fact it was suggested by Professor Haxhiymeri that such migration – primarily from North to South – has had the opposite effect, of transporting conservative Geg social mores into the more liberal south.”

country, and would be likely to drive the male members of a victim clan to self-confinement in the home area as an alternative. Whether internal relocation is reasonable in any particular appeal will always be a question of fact for the fact-finding Tribunal.”

Thus, it is clear that EH (Albania) leaves room for an appellant who establishes that they are affected by an active blood feud, and that the aggressor clan is powerful and/or politically connected and is committed to continuing the feud, to argue that they will not be able to avail themselves of state protection or an internal flight alternative. However, this is not the end of the story: the Home Office has published guidance which attempts to resile from EH (Albania) in significant respects.

### **The Home Office guidance**

The Home Office Country Information and Guidance (CIG) “Blood feuds”, published in July 2016, attempts to resile significantly from EH (Albania) in its assessment of the country situation. This, like other CIG/CPIN documents, combines policy and background material in the same document, unlike the old system where Country of Origin Information Reports (COI) and Operational Guidance Notes (OGN) were kept separate. Notably the Tribunal in *MST and Others* (national service – risk categories) *Eritrea CG [2016] UKUT 00443 (IAC)* criticised the Home Office’s practice of styling these documents “Country Information and Guidance”, as a result of which more recent publications have been renamed Country Policy and Information Notes. Guidance of this kind is intended to provide assistance to case owners deciding asylum claims; but in practice it is also frequently relied upon by Home Office Presenting Officers (HOPOs) in proceedings before the Tribunal.

The guidance contained in the CIG makes a number of bold claims:

#### “2.4 Assessment of risk

2.4.1 Statistics about the numbers of people affected by blood feuds vary greatly. However, after having considered all the available evidence in the country guidance case of EH, the Upper Tribunal found that whilst there remained a number of active blood feuds in Albania, they are few and declining (paragraph 74(a)). More recent information from the Foreign and Commonwealth Office is that the blood feud is a phenomenon in sharp decline in Albania, largely restricted to remote pockets in the mountain north of the country (see Annex A3) and another source has reported that in 2015 there was no harm to human life as a result of blood feuds (see Statistics).

2.4.2 The Upper Tribunal in EH set out the following factors which need to be considered when determining if an active blood feud exists (paragraph 74(f)):

- (i) the history of the alleged feud, including the notoriety of the original killings, the numbers killed, and the degree of commitment by the aggressor clan toward the prosecution of the feud;
- (ii) the length of time since the last death and [their] relationship to the [person];

- (iii) the ability of members of the aggressor clan to locate the [person] if returned to another part of Albania; and
- (iv) the past and likely future attitude of the police and other authorities towards the feud and the protection of the family of the person claiming to be at risk, including any past attempts to seek prosecution of members of the aggressor clan, or to seek protection from the Albanian authorities.

2.4.3 Decision-makers must pay particular attention to distinguish blood feud conflicts from other crimes. Albania media often portray some gang-related killings as blood feud killings, and criminals at times use the term to justify their crimes (see Statistics). The Upper Tribunal in EH found that in order to establish that there is an active blood feud affecting the person, he or she must establish:

- (i) his or her profile as a potential target of the feud identified and which family carried out the most recent killing; and
- (ii) whether the person has been, or other members of his/her family have been, or are currently, in self-confinement within Albania.

2.4.4 The Upper Tribunal in EH found that where there is an active feud affecting an individual and self-confinement is the only option, that person will normally qualify for Refugee status.

## 2.5 Protection

2.5.1 The Upper Tribunal in EH noted that the Albanian state has taken steps to improve state protection (para 74(c)).

2.5.2 The steps taken to improve state protection include, notably:

- better policing;
- specific criminalisation of blood feuds and blood feud killings;
- the creation of specialised police units; and
- the establishment of a high-level coordination committee.

2.5.3 The Upper Tribunal in EH found that in areas where Kanun law predominates, particularly in northern Albania, those steps did not yet (as at October 2012) provide sufficiency of protection from Kanun-related blood-taking if an active feud exists and affects the claimant.

2.5.4 However more recent information provided by the British Embassy in Tirana is that Kanun law no longer predominates. A field visit by embassy staff in 2014 to Kukës, Lezhë and Shkodër found that these regions have established an active policing and prosecution service (see Annex A2).

2.5.5 Albania's current government, which came into office in September 2013, has further stepped up efforts to tackle blood feuds, including issuing revised

instructions to local police services and further toughening sentences to offenders through amendments to the Albanian Criminal Code (see State protection).

2.5.6 Police and criminal justice system representatives monitor, record, and provide protection to affected families. The authorities also prosecute perpetrators.

Municipalities, while facing budgetary constraints, offer social service support, home schooling and medical/psychiatric assistance to victims of blood feuds. Faith groups, especially the Catholic Church and local mosques, cooperate inter-denominationally in an effort to address the problem with work to support affected families, and reconcile conflicts (see State protection).

2.5.7 There are a number of non-governmental organisations in Albania which are active in blood feud mediation and can potentially assist the person to avail themselves of the protection of the state. Missionaries – village elders and other respected persons – are similarly also frequently approached to reconcile and resolve blood feuds in northern Albania (see NGOs and Reconciliation Committees (RCs)).

2.5.8 The onus is on the person to demonstrate why they believe they would be unable to access effective protection.

2.5.9 For further information on assessing the availability or not of state protection, see the Asylum Instruction on Assessing Credibility and Refugee Status.

## 2.6 Internal relocation

2.6.1 When considering internal relocation in EH (October 2012), the Upper Tribunal noted that Albania has a population of '[...] just over 3 million with a land mass of about 10,000 square miles, roughly 15 times the size of London, much of it mountains' (paragraph 69). The Upper Tribunal found that internal relocation to an area of Albania less dependent on the Kanun may provide sufficient protection, depending on the reach, influence and commitment to prosecution of the feud by the aggressor clan (para 74c).

2.6.2 The Upper Tribunal continued: 'Internal relocation will be effective to protect an appellant only where the risk does not extend beyond the appellant's local area and he is unlikely to be traced in the rest of Albania by the aggressor clan. A crucial factor in establishing whether internal relocation is a real possibility is the geographical and political reach of the aggressor clan: where that clan has government connections, locally or more widely, the requirement to transfer civil registration to a new area, [...] would appear to obviate the possibility of "disappearing" in another part of the country, and would be likely to drive the male members of a victim clan to self-confinement in the home area as an alternative' (paragraph 70). The reasonableness of internal relocation will always be dependant on the facts of the particular case.

2.6.3 The onus is on the person to demonstrate why they believe they would be unable to relocate to another town or city, such as Tirana, to mitigate any risk.

2.6.4 For further information on internal relocation, see the Asylum Instruction on Assessing Credibility and Refugee Status.”

## 2.7 Certification

2.7.1 Where a claim falls to be refused, it is likely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.7.2 For further information on certification, see the Appeals Instruction on Certification of Protection and Human Rights claims under Section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).”

The “policy summary” states:

“3.1.1 Whilst there are still some active blood feuds in Albania – particularly in northern areas – they are few and in sharp decline. Decision-makers should pay particular attention to distinguish blood feud conflicts from other crimes.

3.1.2 Victims of the blood feud phenomenon form a particular social group within the meaning of the Refugee Convention because they share a common immutable characteristic.

3.1.3 The Albanian Government has made significant efforts in recent years to address the issue of blood feuds and has created legislative, organisational and operational processes to tackle the phenomenon.

3.1.4 In general, it is unlikely that a person would be able to establish a need for international protection as a consequence of a blood feud as state protection is generally available and internal relocation is also generally an option, but it is important to consider the particular circumstances of each individual on a case-by-case basis.

3.1.5 Where there is an active feud affecting a person, they are only likely to qualify for refugee status if the reach and influence of the opposing clan is so extensive that self-confinement is the only realistic option.

3.1.6 Decision-makers must also note that blood feuds are normally triggered by a murder or other serious offence carried out by the person or a member of their family. The person’s involvement in any such crime should be carefully considered as evidence of serious criminality may mean they the person falls to be excluded under Article 1F of the Refugee Convention.”

It can be seen that the CIG strikes a note of optimism in relation to the Albanian government’s efforts to tackle blood feuds. Whereas EH (Albania) generally accepts that people will not be able to avail themselves of state protection, at least in the north of the country, the author of the CIG appears to think that the quality of state protection has improved markedly. More worryingly, the CIG asserts that a blood-feud-based claim is

likely to be certifiable as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002 – meaning that some claimants will not even have access to the First-tier Tribunal to challenge the merits of the new Home Office position. For the following reasons, many aspects of the CIG’s reasoning and approach are questionable.

At paragraph 6.1.9 the CIG quotes a December 2015 Albanian Helsinki Committee report to the effect that “the blood feud did not strike any victim this year”. Notably, this directly contradicts the United States Department of State Country Report on Human Rights Practices, quoted in the immediately previous paragraph 6.1.8, which states that “[i]ncidents of societal killings, including both “blood feud” and revenge killings, occurred during the year.” Despite this apparent contradiction, the author of the CIG confidently relies on the Helsinki Committee’s claim at paragraph 2.4.1 of the Guidance. The link in the footnote is broken, but the Helsinki Committee’s December 2015 report can be read online, where the text quoted in the CIG appears on page 11.<sup>2</sup> It can be seen that this claim is wholly unsourced: there is no footnote in the report telling us where the Helsinki Committee derived this information. The footnote at the end of the paragraph refers to “Progress-Rapport [sic] of 2015 of EC on Albania.” Presumably this is a reference to the European Commission’s 2015 progress report on Albania, which can likewise be read online.<sup>3</sup> This report indeed mentions blood feuds on page 57, but the paragraph does not claim that no blood feud killings occurred during the year – on the contrary, it claims that blood feuds “remained a problem”.<sup>4</sup> Page 25 of the Helsinki Committee report may indicate that the source of the claim is State Police statistics, but there is no link to the relevant primary source and no evaluation of the reliability of the data.

There is, therefore, a serious question-mark over whether the Helsinki Committee report can be relied upon as a reliable source about blood feud killings in Albania. There is no sign that the author of the CIG has made a serious attempt to evaluate the competing sources and the reliability of the claims.

Conversely, at paragraph 7.1.1 the CIG quotes a very helpful extract from the Independent Advisory Group on Country Information (IAGCI)’s independent expert review of the previous May 2011 guidance:

“7.1.1 Dr Julie Vullnetari of the Sussex Centre for Migration Research, University of Sussex, in her evaluation of the May 2011 Country of Origin Information Report on Albania on behalf of the Independent Advisory Group on Country Information (IAGCI), commented that:

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<sup>2</sup> [http://www.ahc.org.al/wp-content/uploads/2016/12/Report\\_on\\_the\\_human\\_rights.pdf](http://www.ahc.org.al/wp-content/uploads/2016/12/Report_on_the_human_rights.pdf)

<sup>3</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2015/20151110\\_report\\_albania.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_albania.pdf)

<sup>4</sup> “As regards the **right to life**, blood feuds remain a problem, albeit on a limited scale. In March, parliament adopted a resolution and recommendations on blood feuds, based on the findings of the Ombudsman’s special report. The resolution calls for the coordination council on blood feuds set up in 2005 to be revived, for educational and social programmes to be run in rural areas, and for the prosecution and the police to step up investigation efforts and to invest more in preventing conflicts.”



'In the post-communist years the killings often do not adhere to the tenets of the Kanun, but the latter is used as a tool to justify murder that may take place for a variety of reasons, at times involving rival gangs in cities and districts. [...] In a BBC report [Eye for an eye, life for a life, 17 October] in 2005, Tonin Gjuraj, who was a university lecturer in the city of Shkodra and who had researched the issue of blood feud commented [...]: "Acts of revenge justified on the basis of the Kanun are often nothing more than common criminal offences in an area where law enforcement remains weak." The impact, however, is the same in terms of isolating male members of the family and holding the (extended) family collectively responsible for a crime an individual has committed. As such, definitions of revenge or blood feuds often overlap, since they would both be considered as "honour killing" of males. Clarissa de Waal, a Cambridge-based anthropologist who has also carried out research in northern parts of Albania, further elaborated in the same BBC report that: "[...] blood feuds were linked to a concept of 'neighbourhood opinion' strong in Albanian communities [...] families often get involved in blood feuds because if they did not avenge their loss they would be perceived as cowards locally" and that "[...] in some cases killers have paid corrupt officials to secure freedom [...]".'

This paragraph is helpful because it illustrates vividly why it may not be particularly useful to dichotomise revenge killings into "blood feud" and "common crime/organised crime". Yet the CIG itself falls into this trap, in particular at paragraph 2.4.3 quoted above. The IAGCI review, which can be read online, also contains other helpful material which is not quoted in the CIG:

*"Blood feuds continue to remain a problem in the Albanian context and no matter how they are started their end is generally loss of life. The report makes a good case of presenting the material, but misses the urgency, severity and its meaning, by giving more weight to statistics, while protection from state authorities is dealt with by simply describing the legislation..."*

*'This is not to say that the Government statistics are definitive. Their accuracy is qualified by inadequate data-gathering and recording techniques, and insufficient coordination. These problems were underscored by the inconsistency of various official figures provided to me. I am also not aware of any sustained Government effort to reconcile the competing statistics.'*

*'Four factors account for the discrepancies among the various figures: definitional differences; underreporting; limited coverage of issues; and incentives to overstate.'*

This illustrates the difficulty in uncritical reliance on statistical information in estimating the prevalence of blood feuds.

At paragraph 8.1.3, the CIG makes the following claims, which appear to be the principal source for paragraph 2.5.2 quoted above:

“8.1.3 In its November 2011 report on Albania’s implementation of the provisions of the International Covenant on Civil and Political Rights, the UN Human Rights Committee stated that the activity of the police for prevention and investigation of murders of blood feuds has consisted in:

(i) establishing special structures for the fight against blood feud, especially in areas when this phenomenon is widely spread like in the districts of Shkodra, Lezha, Kukes, Diber, etc.;

(ii) selecting the staff and their continuous training on specific issues related to prevention and reveal of murders in general and those of blood avenge or vengeance in particular;

(iii) strengthening the co-operation with prosecution office for investigating quickly these penal offences and bring the offenders before law court;

(iv) undertaking actions for the seizure of criminal offenders in general and those for blood avenge in particular as a very important means for prevention of blood feud;

(v) arrangement of activities for the seizure of wanted persons convicted of commitment of murders for the motive of blood avenge, and these have led to reduce evidently blood feud murders;

(vi) strengthening and institutionalizing co-operation between local government organs and NGOs for settling conflicts by reconciliation;

(vii) strengthening co-operation between educational directorates and schools for education of the young generation with the spirit of tolerance and prevention of crimes;

(viii) supporting and cooperating with commission of blood feud reconciliation, always in compliance with law, for the purpose of intermediating the solution by conciliation of conflicts of blood feuds. “

This is confusingly – in fact misleadingly – presented, because this document is attributed to the “UN Human Rights Committee” when it is in fact the Government of Albania’s submission to the Human Rights Committee. It cannot therefore be regarded as an impartial appraisal of the steps taken by the Government to improve protection. Notably, according to

the European Commission report cited above (at page 57) the coordination council had not in fact been reactivated, as of 2015.<sup>5</sup>

Finally, the British Embassy letters appended to the CIG at pages 36-42 also suffer from certain deficiencies as a source of evidence. They express a number of confident opinions about the situation in Albania. The first letter asserts, for example, that ““Kanun” law no longer predominates. Since the 1990s the state has established a functioning system of law and order through local policing, prosecutors and courts. Modern revenge killings bear little resemblance to the codified, almost ceremonial aspects of “Kanun” based blood feud.” It goes on to claim that “[d]espite the declining trend, local authorities are active. Police and criminal justice system representatives monitor, record, and provide a degree of protection to affected families. The authorities also prosecute perpetrators. Municipalities, while facing budgetary constraints, offer social service support, home schooling and medical/psychiatric assistance to victims of blood feud.” It confidently asserts that “[v]ested interests and criminality play a key role in inflating the sense of the scale of the phenomenon.” There are some claims which are attributed to interlocutors who are not named or identified. For example, the first letter asserts that “[i]nterlocutors both official and NGO suggested that genuine victims of the practice would not be able to leave their homes, let alone cross the continent.” The second letter is no less confident, asserting that “[f]ield visits by embassy and FCO staff have established through interviews with police, prosecutors, NGOs and religious organisations that the scale of “blood feud” is very limited by comparison with the misleading reports produced in support of asylum claims in the UK and elsewhere.”

It can be seen that these letters represent a combination of factual and opinion evidence. If they were to be treated as expert evidence, they would plainly fail the criteria set out in paragraph 10.9 of the Immigration and Asylum Chamber Practice Direction, the importance of which was recently underlined by the Tribunal in AAW (expert evidence – weight) Somalia [2015] UKUT 00673 (IAC). The reader is none the wiser as to who the authors of the letters are, what their qualifications are, to whom they have spoken (other than “NGOs” and “official sources” who are wholly unidentified), or how they have evaluated the quality and reliability of the information obtained. The Tribunal is not in principle opposed to admitting “fact-finding mission” reports, including interviews with anonymous interlocutors, as was made clear in CM (EM country guidance: disclosure) Zimbabwe [2013] UKUT 59 (IAC). However, CM makes clear that it is necessary for tribunals to exercise independent critical judgment, holding that “[t]he problem is not one of admissibility of such material as forming part of the background data from which risk assessments are made, but the weight to be attached to such data. It is common sense and common justice that the less that is known about a source and its means of acquiring information, the more hesitant should a Tribunal judge be to afford anonymous unsupported assessment substantial weight, particularly where it conflicts with assessment from sources known to be reliable.”

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<sup>5</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_albania.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_albania.pdf)

There are, therefore, serious question-marks over the reliability of the CIG and the extent to which it can properly be used as a source of evidence.

### **The next steps**

Those who work with Albanians seeking asylum, including legal practitioners and other professionals, need to be aware of the issues raised in this paper. Sometimes the Home Office may rely upon the CIG as a basis for refusing a claim which might have succeeded on a straightforward application of the EH (Albania) country guidance. Or, even if it has not previously been relied upon, the Home Office Presenting Officer may rely upon the CIG as a source of evidence at the asylum appeal hearing (perhaps serving a copy only on the morning of the hearing). Wherever possible, practitioners should come armed with their own independent expert evidence, which should be the work of a suitably qualified expert and should be compliant with the Practice Direction.

A more troubling situation faced by some people seeking asylum is the certification of their claim under section 94 of the Nationality, Immigration and Asylum Act 2002, or the refusal to accept their further submissions as a fresh claim under paragraph 353 of the Immigration Rules, on the basis of the CIG - meaning that they have no in-country right of appeal, and therefore no opportunity to challenge the merits of the CIG in the First-tier Tribunal. Anyone in this situation needs to take timely legal advice (bearing in mind the three-month deadline for judicial review!) from an expert solicitor specializing in public law.

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