



HIGH COURT OF AUSTRALIA

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STCB v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS AND REFUGEE REVIEW TRIBUNAL

STCB's claim for refugee status based on fear of an Albanian blood feud is defeated by section 91S of the *Migration Act*, the High Court of Australia held today.

In November 2000, STCB applied for a protection visa, based on the claim that in 1944-45 his grandfather had sparked a blood feud by killing a member of the Paja family. He said the Pajas were obliged by the customary law of Albania known as the Kanun, or Code of Lekë Dukagjini, to kill a male member of STCB's family. He feared he would be killed by the Paja family if he returned to Albania and he claimed the Albanian police were powerless to stop this. He claimed he had a well-founded fear of persecution due to being a member of two social groups: his family and Albanian citizens who are subject to customary law. In January 2002, the Immigration Department refused STCB's application for a protection visa because Australia did not owe protection responsibilities to someone whose claims for protection derive from their association with another person who did not have refugee status, in this case STCB's grandfather. This decision reflected a new section, section 91S, inserted into the *Migration Act* in October 2001.

In September 2003, the Refugee Review Tribunal affirmed the decision not to grant a protection visa. It accepted STCB's claim that his family was involved in a blood feud with the Paja family and found there was a tradition of blood feuds, particularly in northern Albania, but that Albanian authorities were addressing the problem. The RRT held that fear of revenge for a criminal act was not fear of persecution for a reason falling within the Refugees Convention definition of persecution. It held that section 91S prevented it from having regard to any fear of persecution arising from STCB's being a member of a family. The RRT also rejected his alternative claim to be a member of a social group of Albanians subject to customary law. For people to form a particular social group they needed to share a characteristic, other than a common fear of persecution, which sets them apart from society at large, but the population affected was too diverse to be regarded as having such a distinguishing characteristic. The Federal Court of Australia and the Full Court of the Federal Court upheld the RRT decision. STCB appealed to the High Court.

The Court, by a 4-1 majority, dismissed the appeal. It held that section 91S is fatal to STCB's claim that he fears persecution from membership of his family. The grandfather had a fear of persecution for a reason other than those listed in the Convention, namely revenge for murder. Section 91S requires that STCB's fear of persecution be disregarded as that fear would not exist if the grandfather's fear had never existed. The Court held that the RRT had considered the questions posed by section 91S to the extent necessary before determining that it could disregard his fear of persecution. On the question of whether he was among Albanians subject to customary law, the Court held that STCB failed to show that possession of a particular characteristic or attribute distinguished the group from society at large. The Court noted that Albanians are not subject to customary law but rather to criminal gangs acting in the name of customary law.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*