

Federal Court



Cour fédérale

Date: 20221209

Docket: IMM-859-22

Citation: 2022 FC 1701

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 9, 2022

PRESENT: Mr. Justice Pamel

BETWEEN:

**BAHRI MEHMETI,
ARBI MEHMETI,
ARTA MEHMETI,
MJEDRIN MEHMETI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal applicant, Bahri Mehmeti, his spouse, Arta Mehmeti, and their two sons, Arbi Mehmeti and Mjedrin Mehmeti [applicants], citizens of Albania, are seeking judicial review of a decision made by the Refugee Appeal Division [RAD], on December 26, 2021, confirming

the merits of a decision of the Refugee Protection Division [RPD]. For the following reasons, I find that the applicants have failed to demonstrate that the RAD's decision was unreasonable. Therefore, the application for judicial review will be dismissed.

II. Background

[2] Mr. Mehmeti was a police officer in Albania for 25 years and served with the border and migration police of the city of Shkoder between 2011 and 2018. In January 2017, the deputy director of border services, Ndreke Zyle ordered him to allow the car of his cousin, Manush Teqja, to cross the border without being inspected. The vehicle arrived at the border and was detected by the sniffer dog while a colleague of Mr. Mehmeti's was present. Mr. Mehmeti therefore had no choice but to inspect the vehicle. Mr. Teqja first told Mr. Mehmeti that he was Mr. Zyle's cousin and, seeing that Mr. Mehmeti was not yielding, then threatened him with retaliation. Following the inspectors' discovery of 57 bags of cannabis hidden in the car, Mr. Teqja was arrested by the criminal police. Mr. Zyle then informed Mr. Mehmeti that he was unhappy with his work and that he did not trust him, and reassigned him to the garage and vehicle inspection. Mr. Teqja's brothers also threatened Mr. Mehmeti with retaliation if he testified against him at his trial. In February 2018, Mr. Mehmeti nonetheless testified before a court to report the events of January 2017. He subsequently resigned from the police in March 2019.

[3] On May 15, 2019, Mr. Mehmeti received a text message on his cell phone from an unknown phone number containing death threats against him and his family members. The following day, Mr. Mehmeti filed a complaint with the city of Shkoder's prosecutor's office. The

officer on duty refused to state the names of Mr. Teqja and Mr. Zyle as reported by Mr. Mehmeti, and instead said that the person behind the threats was unknown to the complainant. On May 23, 2019, Mr. Mehmeti obtained a certificate of the complaint he had filed, which simply indicated that the investigation was ongoing. On May 27, 2019, Mr. Mehmeti followed up with the prosecutor, a man with whom he was acquainted and knew to be honest. The prosecutor told him in secret that his hands were tied by higher political bodies, that Mr. Mehmeti's enemies were powerful and influential people, and that he could do nothing against the Teqjas and Zyles. The prosecutor advised Mr. Mehmeti to leave Albania to save his life and the lives of his family. On May 29, 2019, the applicants left Albania for the United States and arrived in Canada on June 5, 2019, after which they claimed refugee protection.

[4] The RPD rejected Mr. Mehmeti's argument that he belonged to the social group of civil servants refusing to participate in corruption and the social group of victims of a blood feud, finding that the applicants had not demonstrated a nexus with one of the five Convention grounds.

[5] In its decision, the RPD found that the evidence did not show that Mr. Mehmeti worked actively and only against corruption, but rather that, as a border services officer, he had stopped a car suspected of carrying drugs. It also found that Mr. Mehmeti was not part of the social group of persons who were victims of a blood feud because his situation did not meet the criteria established in this regard by the documentary evidence contained in the National Documentation Package [NDP] on Albania. More specifically, the RPD found that a blood feud was the revenge for death by murder of a family member, which was inconsistent with Mr. Mehmeti's account,

and that this practice was more likely to affect Christian families, whereas the applicants were Muslim.

[6] The RPD found that Mr. Mehmeti had provided testimony that was generally consistent with the evidence submitted but identified some elements that affected his credibility. It noted in particular that during his interview with the Canada Border Services Officer on June 10, 2019, Mr. Mehmeti was unable to identify his agents of persecution. Mr. Mehmeti explained to the RPD that his response to the officer referred to his inability to identify the telephone number from which the threat originated. However, the RPD determined that the Border Services Officer's interview notes clearly indicated that Mr. Mehmeti was unable to identify the individual or group behind the threat. The RPD found that this inconsistency affected Mr. Mehmeti's credibility and that he had not demonstrated who was behind the threatening message.

[7] The RPD also determined that the existence of state protection in the applicants' case was determinative of their application. The RPD noted that the documentary evidence on which the applicants relied to demonstrate the level of corruption affecting the Albanian justice system dated from 2015 and 2016. However, it found that the documentary evidence from 2017 to 2020 indicated that the Albanian government had taken significant steps to improve the justice system and fight corruption, and that a person fearing non-state agents or corrupt agents of the state could obtain adequate state protection. The RPD found that by fleeing Albania only 13 days after filing their complaint with the prosecutor's office, Mr. Mehmeti had not given the Albanian authorities sufficient time to help him and that, as a result, he had not refuted the presumption of

state protection that applies to any refugee protection claim, under both section 96 and subsection 9(1) of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [Act].

[8] The RAD upheld the RPD's findings that there was no nexus to any of the five Convention grounds. With respect to the blood feud argument, the Attorney General of Canada [AGC], the respondent in this case, concedes that the RAD erred when, wanting to reiterate the RPD's observations, it found the opposite, namely, that blood feuds were primarily directed at Muslims and that the applicants were not Muslims. However, the RAD correctly found that the RPD had properly determined that the contradictions regarding the identity of the agents of persecution undermined Mr. Mehmeti's credibility, and in turn found that the applicants had not established the identity of their agents of persecution.

[9] With respect to the existence of state protection, the RAD determined that the RPD was justified in giving no weight to older documentary evidence submitted by the applicants concerning corruption in Albania and in preferring the more recent evidence on the measures taken to fight corruption in the justice system. The RAD found that Mr. Mehmeti had not demonstrated that he had taken all steps to seek state protection in Albania or that it had ultimately been denied him. The RAD found that only one attempt to seek state protection was insufficient and that, even if it were accepted that the police officer who took Mr. Mehmeti's complaint did not want to write down the names of the agents of persecution, there were other police officers, superiors or prosecutors to whom Mr. Mehmeti could have spoken. The RAD found that Mr. Mehmeti had been responsible for trying to exhaust the remedies available to the

applicants, and that having failed to do so, he had failed to establish that state protection was inadequate in Albania.

III. Issue and standard of review

[10] There is only one issue raised in this application for judicial review: Is the RAD's decision reasonable? The RAD's findings should be reviewed against a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17; *Bouarif v Canada (Immigration, Refugees and Citizenship)*, 2020 FC 49 at para 9 [*Bouarif*]).

IV. Analysis

[11] The applicants submit that the RPD and the RAD conducted a narrow analysis of their arguments from a Canadian perspective and did not really understand the situation described by their refugee protection claim.

[12] Regarding the question of whether the RPD and RAD should have analyzed their application under section 96 of the Act, the applicants argue that the RPD contradicted itself by finding, on the one hand, that blood feuds occurred in all kinds of situations, including situations involving family disputes, property disputes and family honour, and, on the other hand, that blood feuds meant revenge for death by murder of a family member, which was not the case for the applicants. As I explained to the applicants, there is no contradiction in the RPD's statements. While the contexts leading to a blood feud may be manifold, they should not be confused with

the element that triggers one, that is, for a given group to kill a member of an opposing group. This is what the RPD found, and I see no contradiction here.

[13] The applicants then recast their argument and argued that, essentially, they were alleging that they were afraid of being victims of an act of revenge by Mr. Teqja and Mr. Zyle and the rest of their families. However, be it revenge or a blood feud, because it is the concept of blood feud that was argued by the applicants before the RPD, the fact remains that the argument that Mr. Mehmeti is a member of a social group with a nexus to one of the Convention grounds is baseless. For this reason, I agree with the AGC that, in the end, Mr. Mehmeti, as a police officer, was simply doing his job, and that being an honest citizen who does not want to get involved in criminal activities does not correspond to any social group within the meaning of the Convention.

[14] Furthermore, the argument that the RAD, when it used the words of the RPD, which had found that blood feuds mainly involved Christian families whereas the applicants are Muslim, was wrong in saying the opposite, is irrelevant. One fact remains: The RPD concluded correctly on the issue, and it was the RPD that initially determined that the concept of blood feud did not apply to the applicants' situation.

[15] With respect to the analysis conducted under subsection 97(1) of the Act, the RAD found, like the RPD, that on a balance of probabilities, the authors of the text message dated May 15, 2019, and thus the agents of persecution, were unknown to Mr. Mehmeti. The applicants allege that they submitted clear, albeit circumstantial, evidence confirming the identity

of the individuals behind the threatening text. However, I am of the view that the applicants are asking me to extrapolate, based on their allegations regarding the confidences shared by the prosecutor who received the complaint, and to find that the individual behind the threatening text message was Mr. Zyle, his cousin or a member of his family. Nevertheless, in view of the RAD's findings regarding the inconsistency between the statement made by Mr. Mehmeti to the Canada Border Services Officer and his testimony, I am not satisfied that its decision on this matter was unreasonable.

[16] The applicants also claim that the RPD and RAD erred in their analysis of state protection. I disagree. While the documentary evidence is clear about the pervasiveness of corruption affecting the Albanian justice system, there is also more recent evidence that this system has improved. This is reflected, primarily, by the fact that the agent of persecution against whom Mr. Mehmeti alleges that he filed a complaint was imprisoned, and that Mr. Zyle's brother (who, moreover, is a police officer) was also arrested as part of a police operation that led to the seizure of a large quantity of drugs. As the RAD reiterates, refugee protection claims must be analyzed based on prospective risk and, for this reason, the RAD determined that the evidence on the record did not support the finding, on a balance of probabilities, that the applicants had refuted the presumption of state protection. I see nothing unreasonable with such a determination.

[17] In addition, the applicants submit that, in 2018, Mr. Mehmeti was also threatened by Mr. Teqja's brothers to dissuade him from testifying at the trial, which he did anyway. Mr. Mehmeti also claims that his superior, Mr. Zyle, told him that he had lost trust in him for not

following his instructions to let the car driven by his cousin through, and that he had subsequently been reassigned to the border crossing garage. However, expressing a lack of trust, or even applying unfair disciplinary sanctions, cannot constitute a risk to life or a risk of cruel and unusual treatment or punishment within the meaning of paragraph 97(1)(b). In any event, Mr. Mehmeti had had no contact with Mr. Zyle or Mr. Teqja or their families since March 2018. It was only in May 2019 that he received a threatening text message, apparently unexpectedly and from an unknown number, which prompted him to make a statement to the police the next day. However, although the applicants allege that it was the police officer on duty who made the decision not to write down the names of Mr. Zyle and Mr. Teqja, the fact remains that when he made this complaint, Mr. Mehmeti himself had no tangible evidence to support such an accusation. Later, the prosecutor, known to Mr. Mehmeti, who for his part was apparently well aware of the identity of the individuals who sent the text message, told him that he was unable to continue the investigation because of the political connections of Mr. Zyle and Mr. Teqja, and that the applicants were in such danger that they should flee the country. On the basis of this warning alone, and without waiting for the results of the ongoing investigation, Mr. Mehmeti fled Albania with his family.

[18] Yet it appears from the evidence on the record that the arrival of the threatening text message, which is the reason for the alleged risk of persecution, and the confirmation of the failure of state protection that quickly followed both occurred in May 2019, just days before the applicants left for the United States with tickets that had been purchased a month earlier, on April 20, 2019. The only explanation the applicants submitted for this was that they were already planning a trip to the United States before these events occurred. Coincidence or not, I can

certainly see how the applicants' obtaining all the elements necessary for their refugee protection claim in the context of this unusual timing, to say the least, could have been on the minds of the RPD and the RAD when they made their final decision.

[19] In these circumstances, I have not been satisfied of the unreasonableness of any of the disputed aspects of the RAD decision, other than the mere error of inverting Christians and Muslims in the summary of the RPD's finding on the existence of a blood feud, an error which had no bearing on the determinative issue of state protection in this matter. For these reasons, the application for judicial review is dismissed.

V. Conclusion

[20] The application for judicial review is dismissed.

JUDGMENT in IMM-859-22

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Peter G. Pamel”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-859-22

STYLE OF CAUSE: BAHRI MEHMETI, ARBI MEHMETI, ARTA MEHMETI, MJEDRIN MEHMETI v MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 9, 2022

JUDGMENT AND REASONS: PAMEL J.

DATED: DECEMBER 9, 2022

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