



IAC-AH-SC-V1

**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/06170/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard remotely on Skype for Decision & Reasons Promulgated  
Business  
On 5 March 2021 On 17 March 2021**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**E J**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

**Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

**Representation:**

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer  
For the Respondent: Mr A Gilbert, Counsel, instructed by Oliver & Hasani  
Solicitors

## **DECISION AND REASONS**

### **Introduction**

- 1.** This is an appeal by the Secretary of State with permission against one aspect of the decision of First-tier Tribunal Judge Cockrill (“the judge”), promulgated on 27 February 2020, by which he allowed EJ’s appeal against the refusal of his protection and human rights claims.
- 2.** The appeal was allowed both on Refugee Convention (“the Convention”) grounds and with reference to Articles 3 and 2 ECHR.
- 3.** In summary, EJ’s claim was as follows. He had been a lawyer working for what in effect was the government legal service in Albania. He also had connections with a political party (the Socialist Movement for Integration Party). In 2014 EJ was dealing with a particular case involving the registration of a large amount of land. The individual seeking to register that land, K, was a prominent businessman. EJ was of the view that K had acted dishonestly in obtaining relevant documentation in respect of the registration of the land. EJ took action to refuse the application to register the land. Unhappy with this decision, K sought to use his influence to get EJ dismissed from his job. EJ sought assistance from his political party.
- 4.** In June 2017 the general election in Albania saw the party with which EJ was associated lose power. Shortly thereafter EJ was dismissed from his job. K then instigated legal proceedings against EJ. Some months after his dismissal EJ was threatened and then, in November 2017, he was the victim of an attempt on his life by way of a drive-by shooting. When he reported this to the police they declined to provide any assistance. EJ, his wife and child left Albania and came to the United Kingdom shortly thereafter. EJ asserted that in October 2018 the police had been asking after his whereabouts. It transpired that a former colleague had in fact been killed in December 2018.
- 5.** In refusing the protection and human rights claims, the Secretary of State accepted that EJ was a lawyer and that he had been shot at as a result of his involvement with K. However, it was not accepted that he was at risk on return to Albania. Significantly for the purposes of the appeal before me, the Secretary of State concluded that EJ’s claim did not disclose a reason under the Convention.

### **The decision of the First-tier Tribunal**

- 6.** On appeal, EJ put his case forward on the basis that he had taken a political stance to uphold the rule of law and that this constituted a reason under the Convention. The judge found EJ to be entirely credible (see [32]) and that the supporting evidence produced could be relied on. An expert report was accorded “considerable weight” (see [33]). The judge found that corruption was “endemic” within Albania, that EJ could not obtain effective protection from state agencies, and that state actors had

in fact become potential persecutors and would actively seek to pursue him on behalf of K. [34] of the judge's decision reads as follows:

"In trying to see the best way in which the appellant's case fits the appropriate legal framework, I recognise that the 1951 Refugee Convention does not sit particularly satisfactory with this case. The Convention reason as given by Counsel is anti-corruption/mafia state and that is possibly the best way of analysing it in relation to the 1951 Convention. The short point is that the appellant wanted to uphold the rule of law. He was simply trying to do his duty at the registry by not complying with the bullying of a powerful individual to push through the registering of a plot of land to which he was not entitled because documents that he had produced were considered to be unreliable and false. The burden is on the appellant to prove his claim for asylum with the standard of proof being commonly expressed as a real risk or a reasonable degree of likelihood."

7. At [35] the judge went on to conclude that even if there was no Convention reason, EJ would nonetheless be at risk of being killed and subjected to ill-treatment contrary to Articles 2 and 3 ECHR respectively.

### **The grounds of appeal**

8. The Secretary of State drafted her grounds on a very narrow basis. The sole contention stated therein is that the judge "failed to identify" the Convention reason applicable to EJ's case. There was no challenge to findings of fact or the conclusion that EJ was entitled to succeed in respect of Articles 2 and 3 ECHR.
9. Permission to appeal was granted by First-tier Tribunal Judge Haria on 24 April 2020.
10. Subsequent to this a Rule 24 reply was filed on EJ's behalf. This contended that the Convention reason was actual or imputed political opinion and that there was a necessary nexus between what EJ had done and the motivation of those wishing him harm.

### **The hearing**

11. At the hearing before me Mr Walker confirmed that the Secretary of State was not challenging the findings of fact or the conclusions under ECHR. Instead, the narrow attack was based on what Mr Walker described as the judge's attempt to "shoehorn" EJ's case into the Convention. Mr Walker pointed out that the term "political opinion" did not feature in [33] or [34] of the judge's decision.
12. For EJ, Mr Gilbert submitted as follows. There was ample evidence before the judge to show that corruption within the Albanian state was indeed endemic. This was relevant to the actions of the police or any other state actor working in collusion with K. Mr Gilbert submitted that even if specific

state actors were motivated at least in part by personal greed (perhaps the payment of bribes), this was not fatal to EJ's argument on the existence of a Convention reason. The state actors had been operating within the context of a corrupt state apparatus. State power would be employed in order to persecute EJ and that a material reason for this would be EJ's politically-motivated stance, namely that he saw it as his duty as a lawyer to uphold the rule of law. It was not simply a personal view. EJ had expressed his stance as a political opinion himself in his own evidence, evidence which had been accepted by the judge. It was accepted that in order to succeed EJ had to show both that K would seek to do him harm and also that K had used his influence to engage the "services" of state actors. Whilst EJ's association with a specific political party was not a stand-alone basis of the existence of the Convention reason, it was a relevant element. Mr Gilbert submitted that it was of note that:

- (i) EJ had been a legal officer under the previous government and had links to a particular political party;
- (ii) That when initially threatened with dismissal he had sought the assistance of his political party;
- (iii) That he was dismissed from his job after his party lost power following the 2017 general election.
- (iv) EJ had been threatened some months after he was dismissed.

**13.** It was submitted that mixed motivations on the part of potential persecutors was permissible and that this was a case not about simple criminality but involved state corruption as well.

**14.** In reply, Mr Walker recognised the force in the final point put forward by Mr Gilbert.

### **Decision on error of law**

**15.** As I announced to the parties in summary form at the hearing, I conclude that, on the particular facts of this case, there are no material errors of law in the judge's decision.

**16.** I recognise that he did not expressly use the term "political opinion" in [33] or [34], but of course his decision must be read as a whole and the substance of what is said will almost always be more important than the form. It is clear enough that EJ's case was put forward to the judge on the basis of a Convention reason of political opinion and, in all the circumstances, I am satisfied that the substance and effect of what is stated in [34] is sufficient to show that this was the Convention reason applied by the judge.

17. The question then arises as to whether political opinion was a permissible Convention reason.
18. In my judgment it was. “Political opinion” should, in my judgment, be interpreted broadly so as to provide effective protection under the Convention. In this I am supported by the views of Professor Hathaway in his seminal work *The Law of Refugee Status* (2014, 2<sup>nd</sup> Edition, at pages 415–419). In recognising that cases involving an individual who seeks to stand up for the rule of law may present challenges, Professor Hathaway notes that, *“in a politicised context where corruption and criminal behaviour are endemic ... there is no simplistic dichotomy between opposition to criminal activity and the expression of a political opinion.”* He goes on to state, *“... “the critical importance of the specific facts of the particular case” and the historical and socio—political context of the society in question are determinative.”* In this regard, he takes the view that the *“strongest type of case is one in which the applicant has “stood up for law and order” in the context of a corrupt system...”* A number of decided cases from other common law jurisdictions are cited in support of this analysis.
19. I have also considered a leading domestic authority on the scope of “political opinion”, *Gomez* [2000] INLR 549. An important element of the Tribunal’s erudite analysis was that in cases concerning criminal activity and possible political opinion (actual or imputed), everything will depend on the particular facts relating to both the individual claimant and the country in which the risks are said to have arisen (see, for example, paragraph 47).
20. On the facts of the present case, it is sufficiently clear that the judge, having found EJ to be credible (including his evidence that he deemed his stance on the rule of law to constitute a political opinion the country information relating to endemic corruption in Albania), concluded that the position taken by EJ was not simply a purely personal preference or desire, but involved, at least to a material extent, a political position: it went to the heart of his role as a lawyer who deemed it to be a duty to uphold the rule of law for the benefit of his country. I am also satisfied that the judge had taken the view that EJ’s position would be seen to be political by K and/or the authorities with whom he (K) was colluding. Not only was EJ associated with a political party (and one which has lost power in the June 2017 elections), but in the context of a state riddled with corruption it was open to the judge to in effect (if not expressed in terms) conclude that the fight against that corruption was deemed to have taken on a political colour. It was irrelevant whether an anti-corruption standpoint was a specific objective of the political party with which EJ was associated.
21. In addition to the existence of an opinion that was in fact, or at least deemed to be, political, a nexus between that view and the motivations of the potential persecutors must be established.
22. In this case, the problems originally emanated from a private individual K, who ostensibly did not represent a particular political party or standpoint.

It may be said that if K had acted alone throughout, a causal link would be difficult to show. However, his collusion with state actors who, on the judge's finding, then became potential persecutors, brought into the equation at least a partial political motivation. As discussed previously, EJ's stance on upholding the rule of law was politicised by virtue of the situation in Albania. When bearing in mind the lower standard of proof and the need to interpret the Convention so as to provide effective protection, it would have been open to the judge to have expressly found the necessary nexus to exist.

- 23.** I acknowledge that the judge's conclusion on the Convention reason issue is not as detailed as it might have been (although the grounds of appeal do not refer to an absence of reasoning). Having said that, I have referred already to the importance of looking at the substance of decisions. It was rationally open to the judge to conclude, as a matter of substance, that the Convention was engaged and that EJ's appeal fell to be allowed on that basis as well as under Articles 2 and 3 ECHR.

### **Anonymity**

- 24.** I have maintained the anonymity direction made by the First-tier Tribunal. This is a case involving a protection claim and it has been found that EJ is in need of international protection from both state and non-state actors in Albania. Further, he is in the United Kingdom with his wife and their child. An anonymity direction is appropriate.

### **Notice of decision**

- 25. The decision of the First-tier Tribunal did not involve the making of an error of law and it shall stand.**
- 26. The Secretary of State's appeal to the Upper Tribunal is therefore dismissed.**

Signed H Norton-Taylor

Date: 10 March 2021

Upper Tribunal Judge Norton-Taylor