



asylum protection under Article 1F(c) of the 1951 Refugee Convention. Article 1F provides:

'The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.'

The parties agree that the judge erred by proceeding on the incorrect basis that the Secretary of State sought to exclude the appellant under sub-paragraph (a) rather than (c). At [9] the judge refers to the respondent having failed to discharge the burden of proving 'that the appellant committed *crimes against humanity...*' [my emphasis].

3. The submissions made at the initial hearing were not entirely clear as to the materiality of the judge's error. I am satisfied that the judge did proceed to consider the incorrect element of Article 1F. However, the validity of the Secretary of State's further contention, that the judge misunderstood the argument advanced by the Secretary of State when he writes at [9] that the respondent has 'not suggested' that the appellant 'had knowingly transferred arms to the KLA after the implementation of the United Nations Security Council Resolution regarding the transfer of arms into Kosovo adopted on 31 March 1998', whilst it may literally be accurate has, in effect, been negated by the judge's finding at the end of paragraph [9] ;

"In fairness to Ms Cunha, she put to the appellant consistently that he had not been aware [that the arms were intended for the KLO] and rather more is required for the respondent persuasively to claim that the burden of proof had been discharged."

That finding, that the appellant did not knowingly take part in the transfer of arms, is, in my opinion, sufficiently cogent and clear to stand. Therefore, whether or not the judge mischaracterised the respondent's case on the transfer of arms after the UN resolution, the finding renders any error immaterial; the finding is equally applicable to sub-paragraphs (a) and (c) of Article 1. I find that, although he erred in his reference to 'crimes against humanity' at [9], the judge's findings of fact are sound and sufficiently comprehensive to render his error immaterial.

4. As I understood the representatives, the second ground (that the judge made an unsustainable finding that the appellant had 'consistently' maintained that the KLA were transferring weapons into Kosovo 'for their own purposes' [9]) was dropped by the respondent at the First-tier Tribunal Case Management Review. The alleged inconsistencies in the appellant's account appear in his second asylum interview (AIR2) which

the Tribunal at the Case Management Review considered was unreliable as evidence after the appellant had complained about the quality of the interpretation. Both representatives at the initial hearing in the Upper Tribunal agreed that the judge had not erred by describing the appellant's evidence as 'consistent.'

5. The third ground, that the judge failed to consider Article 33 of the Rome Statute 'with respect to [the appellant's] culpability and superior orders' also arises from the answers which the appellant had given at AIR2.
6. As regards Article 3 ECHR, the Secretary of State has not challenged the judge's finding at [11];

"The respondent did not suggest ... that the Albanian authorities are able and willing to offer ... the appellant a sufficiently of protection from the violent actions of gangsters in Albania."

That assessment followed on from the judge's unchallenged finding at [10] that the appellant was at risk from gangsters. Whatever shortcomings may exist in the judge's analysis of the claim for/exclusion from asylum, his findings on Article 3 ECHR are clear and sustainable. I do not agree with the respondent's submission that any error in the application of Article 1F has 'tainted' the judge's findings of fact on Article 3 ECHR.

7. Article 8 ECHR is slightly more problematic. At [13], the judge appears to find that the appeal should be allowed on Article 8 ECHR (family life) grounds but states in the final sentence that the Article 8 ECHR appeal is dismissed. Under the heading Notice of Decision, the judge has then stated 'the appeal on human rights ... (Article 8 ECHR) grounds is allowed.' I find that the final sentence of [13] contains a typographical error and that it is sufficiently clear that the judge intended to allow the Article 8 ECHR appeal.
8. The judge's decision is not without problems. I am satisfied, for the reasons which I have given, that the judge's decision on Article 3 and 8 ECHR is sound in law. As regards asylum, I find that (i) any potential problems concerning the consistency of the appellant's evidence arising from the AIR2 were removed following the respondent's concession at the Case Management Review and; (ii) the judge's finding that the respondent had not discharged the burden of proof in respect of Article 1F(a) is equally applicable to Article 1F(c). The judge's error in the application of Article 1F does not require me to set aside his decision. Accordingly, the Secretary of State's appeal is dismissed.

### **Notice of Decision**

The Secretary of State's appeal is dismissed

Signed  
Upper Tribunal Judge Lane

Date 15 May 2021

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

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