

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	70
Land:	Diverse emner
Kilde:	UNHCR
Titel:	"UNHCR position on claims for refugee status under the 1951 Convention relating to the Status of Refugee based on a fear of persecution due to an individuals' membership of a family or clan engaged in a blood feud"
Udgivet:	6. august 2007
Optaget på baggrundsmaterialet:	6. august 2007



UNHCR position on claims for refugee status under the 1951 Convention relating to the Status of Refugees based on a fear of persecution due to an individual's membership of a family or clan engaged in a blood feud

1. The 1951 Convention defines a refugee as someone, who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable to or, owing to such fear, is unwilling to avail him- or herself of the protection of that country. This position paper examines the situation of individuals claiming refugee status based on their fear of persecution as a result of their membership of a family or clan engaged in a blood feud.

Well-founded fear of persecution

2. What amounts to a well-founded fear of persecution will depend on the particular circumstances of each individual case. Persecution may be considered as encompassing serious violations of human rights, including a threat to life or freedom, as well as other kinds of serious harm, bearing in mind the particular circumstances of the case, including the opinions, feelings and psychological make-up of the asylum applicant.¹

3. Where a claim concerns a blood feud, it is important in assessing whether the treatment feared amounts to persecution to clarify in the individual case what may be involved, as this will vary depending not least on the country of origin. In general, however, a blood feud involves the members of one family killing members of another family in retaliatory acts of vengeance which are carried out according to an ancient code of honour and behaviour. The practice dates back to mediaeval times and is still evident today in a number of places, including Albania, Kosovo (Serbia and Montenegro) and the Northern Caucasus. Traditionally, it is only adult males who become targets of a blood feud, which can last for decades and can require the extinction of all male family members. More recently, there have been reports of women and children becoming targets in blood feuds. They may also be killed or injured in attacks on male family

¹ See generally, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1979, re-edited 1992, (hereafter the “UNHCR Handbook”), paragraphs 51–53.

members, while children can be kept at home for extended periods and prevented from attending school because the family fears they may be killed, attacked or kidnapped. Thus, while adult males are the primary target in a blood feud, other family members may also be at risk of death or lesser violations of their human rights.

4. A violation of the right to life, which includes the right not to be arbitrarily deprived of one's life² or of the right to freedom from torture, will always constitute persecution. It can be necessary, however, also to assess whether other forms of harm, to which an asylum applicant claims to be at risk of being subjected, amount to persecution, whether as a single act or on a cumulative basis. As the UNHCR *Handbook* notes, "whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case", which requires an assessment not only of the objective facts of the case but also of its subjective elements including "the opinions and feelings of the person concerned" (paragraph 51).

5. In the particular context of blood feud, it is important to examine the nature of the blood feud, the experiences of other members of the family or clan engaged in the feud, including whether any family members have been killed or injured by the opposing family or clan. It is also necessary to bear in mind the cultural context of a blood feud, in which threats do not expire.³

6. Among the factors relevant to determining the nature of the risk if the applicant were to be returned are:

- (a) whether the dispute can be characterized as a blood feud;
 - (b) if it can, the extent to which its origins and development (if any) can be regarded by the society concerned as conforming to the classic principles of blood feuds, as opposed, for instance, to revenge for common criminal acts carried out for other motives;
 - (c) the history of the feud, including the notoriety of the original killings and numbers of people killed;
 - (d) the past and likely future attitude of the police and other authorities towards the feud;
 - (e) the degree of commitment shown by the opposing family towards continuing the feud;
 - (f) the time that has elapsed since the last killing;
 - (g) the ability of the opposing family to locate the alleged potential victim anywhere in the country of origin;
 - (h) that person's position within the family as a potential target for the blood feud;
- and

² See Article 6(1) of the 1966 International Covenant on Civil and Political Rights.

³ In the particular situation where a potential victim of a blood feud also committed an offence in the context of that feud but has served a sentence in his or her country of origin, this may not be viewed in the eyes of the blood feud tradition as constituting expiation of the crime.

(i) the prospects for eliminating the feud, whether by recourse to the payment of money, a reconciliation organization or otherwise.⁴

7. All of these issues may have a bearing on the determination of the case. In particular, they should help distinguish the claim from those involving a well-founded fear of persecution by common criminals or the mafia. In general, States do not determine the latter as having a link to a Convention ground, although they may grant a complementary form of protection.

8. As in other cases, the question of exclusion may be an issue. This could be so if there are serious reasons for considering that an applicant has committed a serious non-political crime in relation to the blood feud, whether directly or as an accessory.⁵

Agents of persecution

9. The question of who the agent of persecution is arises in cases involving blood feud. While persecution is most often perpetrated by the authorities of a country, serious discriminatory acts or other offences committed by the local populace, or by individuals, can also be considered persecution for the purposes of the refugee definition, if such acts are knowingly tolerated by the authorities, or if the authorities refuse, or are unable, to offer effective protection.⁶ There is thus scope within the refugee definition to recognize both State and non-State agents of persecution.

10. If an asylum applicant has demonstrated a well-founded fear of persecution, he or she must still show either that the persecution is by the State or that it is by agents the government is unable or unwilling to control. In cases involving blood feud, when determining the ability of the State to control such practices, the existence of legislation outlawing blood feuds or establishing judicial mechanisms to resolve them does not of itself mean individuals are adequately protected. There needs to be willingness and the effective capacity on the part of the police, the courts and other State authorities to detect, prosecute and punish those responsible for blood feuds, including through the application of criminal laws. Even where state reconciliation commissions may, for instance, have been established, they need to be effective in resolving such feuds in practice. In particular, where reconciliation efforts are may be undertaken by non-governmental organizations this may not constitute sufficient protection. In each case, it is therefore

⁴ These criteria draw on those identified in the case of *TB v. Secretary of State for the Home Department*, UK Immigration Appeal Tribunal, [2004] UKIAT 00158, 21 June 2004, paragraph 36, available at <http://www.bailii.org/uk/cases/UKIAT/2004/00158.html>.

⁵ See generally, UNHCR, “Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees”, HCR/GIP/03/05, 4 September 2003, available at <http://www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.pdf?tbl=PUBL&id=3f7d48514> and the accompanying “Background Note on the Application of the Exclusion Clauses”, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RSDLEGAL&id=3f5857d24>.

⁶ See UNHCR *Handbook*, above note 1, paragraph 65.

necessary also to determine how efforts on the part of the authorities relate to the individual case.

The causal link (“for reasons of”)

11. To fulfil the refugee definition, an individual’s well-founded fear of being persecuted must be related to – be “for reasons of” – one or more of the five Convention grounds.

12. In cases where there is a risk of persecution at the hands of a non-State actor for reasons related to one of the Convention grounds, the causal link is established, whether or not the absence of State protection is for a Convention reason. Alternatively, where the risk of being persecuted at the hands of a non-State actor is unrelated to a Convention ground, but the inability or unwillingness of the State to offer protection is for reasons of a Convention ground, the causal link is also established.⁷ It could, for instance, be that while the risk is linked to the applicant’s family membership, the authorities are unwilling to protect him or her because of his or her (perceived) political opinion⁸ or ethnic background. Alternatively, in the case of *Michelle Thomas and Others v. Attorney General*, which concerned a South African family, whose father-in-law was a racist construction foreman who abused his black workers physically and verbally, a US Court of Appeals found that “the reason for the animosity towards Boss Ronnie [the appellants’ father-in-law] that led to the harm to the family [perpetrated and threatened by construction workers at the company] is not relevant, what is critical is that the harm suffered by the Thomases was on account their membership in a protected group”.⁹

13. The causal link can thus be established either through the motivation of the perpetrators of the harm or by the discriminatory failure of State protection. Furthermore, in UNHCR’s view, it is sufficient that the Convention ground be a relevant factor contributing to the persecution. It does not have to be the sole, or even dominant, cause.

14. In blood feud cases, an individual is not attacked indiscriminately, but is rather targeted because he or she belongs to a particular family and on the basis of a long-established code. Compared to other cases in which a person may fear being ill-treated, or even killed, for instance, if they owe someone money or are targeted by the mafia,

⁷ See UNHCR Guidelines on Membership of a Particular Social Group, above footnote 11, at paragraph 21; “Summary Conclusions – Gender-Related Persecution”, Global Consultations on International Protection, San Remo Expert Roundtable, 6–8 September 2001, no. 6.

⁸ In Canada, for instance, the appeal of a Ukrainian family was allowed on political opinion grounds. The court found that the husband/father, who was a businessman, had faced persecution on the grounds of his political opinion after having lodged a formal complaint about widespread government corruption. The political opinion ground was found to apply including in situations where the government officially agreed with the opinion expressed by the applicant, but was unable or unwilling to protect that person from persecution. See *Klinko v. Canada (Minister of Citizenship and Immigration)*, Federal Court of Appeal in Canada, [2000] 3 F.C. 327, 22 February 2000.

⁹ *Michelle Thomas and Others v. Attorney General*, United States Court of Appeals for the Ninth Circuit, No. 02-71656, 409 F.3d 1177, 3 June 2005, available on Refworld.

individuals fearing persecution in a blood feud scenario are not targeted because of their own actions but because of responsibilities viewed as having been incurred by their (living or dead) family members. They are thus not merely a victim of a private vendetta but also the victim of the code which regulates the blood feud tradition.¹⁰

15. If a contributing reason for the applicant's fear of persecution, cannot be established, whether this be as a result of membership of a particular family or for one of the other Convention grounds, it remains necessary to determine whether a contributing reason for the authorities' potential inability or unwillingness is related to one or more of the Convention grounds. In the context of an assessment of a link to the membership of a particular social group examination in greater detail in the next section, one reason for the authorities' inability or unwillingness to provide protection could, for instance, be their view that blood feud is a family matter which should be resolved between families rather than by the law enforcement agencies.

Membership of a particular social group

16. In regard to the Convention ground "membership of a particular social group", UNHCR issued Guidelines on International Protection on this issue in May 2002.¹¹ Paragraph 11 of these Guidelines defines a particular social group as

"a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights."

17. This definition seeks to reconcile the "protected characteristics" and the "social perception" approaches that have dominated decision-making in common law jurisdictions. The protected characteristics approach may be understood to identify a set of groups that constitute the core of the social perception analysis. While the particular social group ground is generally less well developed in civil law jurisdictions, both approaches have received mention.¹²

18. In applying the definition of a particular social group provided in these Guidelines, it is UNHCR's view that a family unit represents a classic example of a "particular social group". A family is a socially cognizable group in society and individuals are perceived by society on the basis of their family membership. Members of a family, whether

¹⁰ Quite a number of cases from different jurisdictions equate blood feud cases with cases where the applicant fears persecution by criminals or the mafia and find no causal link with a Convention ground, although jurisprudence on the latter issue is not conclusive. Where no causal link is found, it has nevertheless to be remembered that complementary forms of protection under international human rights instruments may well be required.

¹¹ UNHCR, "Guidelines on International Protection: 'Membership of a Particular Social Group' within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees", HCR/GIP/02/02, 7 May 2002 (hereafter "UNHCR Guidelines on Membership of a Particular Social Group"), available at <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3d58de2da>.

¹² Ibid., for further details.

through blood ties or through marriage and attendant kinship ties, meet the requirements of the definition by sharing a common characteristic which is innate and unchangeable,¹³ as well as fundamental and protected. Article 23(1) of the 1966 International Covenant on Civil and Political Rights provides that the family is the “natural and fundamental group unit of society” and is “entitled to protection by society and the State”. In addition, the family is widely perceived as a cognisable unit, the members of which are readily distinguishable from society at large.

19. As noted in UNHCR’s Guidelines, families have been recognized by courts and administrative bodies as constituting a “particular social group” under both the “protected characteristics” approach and the “social perception” approach.¹⁴ It is clear, when applying these standards, that family membership falls well within the ambit of the “membership of a particular social group” ground contained in the refugee definition.¹⁵ In 2005, for instance, in the *Michelle Thomas* mentioned above, the court reaffirmed that a family may constitute a particular social group.¹⁶

20. In blood feud cases, it would be possible to define the particular social group, for instance, as “family members involved in a blood feud” or “family members targeted because of an ancient code”, or “male members of a family targeted under a traditional blood feud canon” or, more specifically still, “male members of the XXX family threatened with death as a result of a blood feud with the YYY family”. In this way, the group is not defined solely by the persecution feared as a result of the blood feud but also by its kinship ties.

Internal flight or relocation

21. Where a well-founded fear of persecution for a Convention reason has been established, it may also be that the decision-maker needs to examine if the persecution can be avoided by relocation elsewhere within the country of origin. This may be particularly relevant in blood feud cases where the agent of persecution is not the state, but it would still be necessary for the proposed area of relocation to be practically, safely, and legally accessible to the individual, for him or her not to be exposed to a risk of being persecuted or other serious harm there and for him or her to be able, in the context of the country concerned, to lead a relatively normal life there without facing undue hardship.¹⁷

¹³ Blood relations cannot be changed and, even though a marriage can be dissolved, the fact of the existence of that marriage in the past cannot be changed.

¹⁴ UNHCR Guidelines on Membership of a Particular Social Group, above footnote 11, at paragraphs 6 and 7.

¹⁵ See also, UNHCR, *Refugee Status Determination*, Self-study module 2, 1 September 2005, at p. 37 (“One of the most visible examples of a particular social group is the family.”).

¹⁶ See *Michelle Thomas and Others v. Attorney General*, above footnote 9.

¹⁷ See UNHCR, “Guidelines on International Protection: Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees”, HCR/GIP/03/04, 23 July 2003, available at <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3f28d5cd4>.

Conclusion

22. To conclude, an application for asylum based on an individual's fear of persecution because of his or her membership of a family or clan engaged in a blood feud may, depending on the particular circumstances of the individual case, lead to a recognition of refugee status under the 1951 Convention.

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17 March 2006