Upper Tribunal
(Immigration and Asylum Chamber)

Cokaj (paras A398-399D: 'foreign criminal': procedure) Albania [2020] UKUT 00187 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 December 2019 and 31 January 2020	On 27 Apr 2020
	[Addendum inserted 19 July 2021]

Before

THE HON. MR JUSTICE LANE, PRESIDENT

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

SELAMI COKAJ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation :

For the Appellant: Ms S. Naik QC and Ms H. Foot, instructed by Archer Maher Solicitors

For the Respondent: Mr M. Gullick, instructed by the Government Legal Department

1. Paragraph A398 of the immigration rules governs each of the rules in Part 13 that follows it. The expression 'foreign criminal' in paragraph A398 is to be construed by reference to the definition of that expression in section 117D of the Nationality, Immigration and Asylum Act 2002: OLO and Others (para 398 - 'foreign criminal') [2016] UKUT 00056 affirmed; Andell (foreign criminal - para 398) [2018] UKUT 00198 not followed.

2. A foreign national who has been convicted outside the United Kingdom of an offence is not, by reason of that conviction, a 'foreign criminal' for the purposes of paragraphs A398-399D of the rules.

3. In the absence of a material change in circumstances or prior misleading of the Tribunal, it will be a very rare case in which the important considerations of finality and proper use of the appeals procedure are displaced in favour of revisiting and varying or revoking an interlocutory order: Gardner-Shaw (UK) Ltd v HMRC [2018] UKUT 419 followed.

DECISION AND REASONS

A. THE APPELLANT'S HISTORY

1. The appellant is a citizen of Albania, who was born there in 1973. On 26 October 1994, the appellant was convicted of murder by the District Court in Tropoje, Albania and sentenced to fifteen years' imprisonment. He says he was able to leave prison in 1997, during the unrest then prevalent in Albania.

2. Also in 1997, the appellant entered the United Kingdom unlawfully. He claimed asylum on 30 September 1997, using a false identity (VG) and falsely claiming to be from Kosovo. The appellant withdrew that application but made another one, using the same false details, in December 1998. That application was refused by the respondent in January 2000. The appellant, however, remained unlawfully in the United Kingdom. Around this time, he was convicted in absentia in Albania of an offence of armed robbery, for which he was sentenced to ten years' imprisonment.

3. In April 2003, the appellant made an application for leave to remain. Once again, he used the same false identity and nationality. The respondent refused that application in June 2003.

4. The appellant's wife and young son arrived in the United Kingdom in December 1998, with the assistance of people smugglers. The wife was told by the appellant to tell the respondent that she was from Kosovo and to use a false identity. She did so.

5. On 6 February 2004, the appellant applied for indefinite leave to remain, once again using the false identity and nationality. The application extended to the appellant's wife and son. The respondent granted the application on 14 January 2005.

6. In 2006, the Republic of Albania requested the extradition of the appellant. It did so in the appellant's true identity and nationality. The appellant challenged that decision before a Senior District Judge, who ordered the appellant's extradition. The appellant appealed to a Divisional Court which, on 15 February 2007, dismissed his appeal ([2007] EWHC 238 (Admin)). The challenge in the Divisional Court involved the appellant's conviction in absentia for armed robbery. The Albanian Court of Appeal had merged the appellant's sentences for murder and armed robbery into a single sentence of twenty years' imprisonment. Since, however, the appellant had been convicted and sentenced for the armed robbery in absentia, the Senior District Judge had ordered the appellant's discharge in respect of the robbery conviction because the appellant was not entitled to a retrial. The issue before the Divisional Court was whether the appellant's extradition in respect of the murder conviction should be ordered, when he was subject to a single "merged" sentence of imprisonment. The Divisional Court considered assurances given by the Albanian Ministry of Justice and concluded that the appellant would not, if extradited, be required to serve more than his sentence in respect of the murder conviction.

7. Following the conclusion of the Divisional Court proceedings, the appellant, on 23 April 2007, made a further application for asylum. Once again, he did so using the false identity and nationality. The appellant claimed that, despite his identification in the extradition proceedings, he was, in truth, VG from Kosovo.

8. The respondent refused the appellant's claim on 10 February 2009. The appellant appealed to the Asylum and Immigration Tribunal, which dismissed his appeal in July 2009. By November 2009, the appellant had become appeal rights exhausted. On 11 December 2009, the appellant was extradited to Albania to serve the remainder of his sentence for murder.

9. In 2010, the Supreme Court of Albania set aside the appellant's conviction for armed robbery. The Supreme Court found that there had been procedural irregularities in respect of the robbery conviction; specifically, that the appellant's signature on a special power of attorney, by which his defence lawyer had been appointed, was a forgery. The judgment of the Supreme Court recognised that the forgery led "to a violation of a very important right of the convict, that of a fair trial". The possibility of a review was expressly envisaged, the Supreme Court noted, in Article 4, paragraph 2 of Protocol No. 7 of the ECHR. The appellant was released from prison in Albania in June 2011 because of limitation provisions applying under Albanian law in relation to the appellant's prison sentence for the 1994 murder.

10. The appellant says that he left Albania in February 2012 and re-entered the United Kingdom clandestinely by lorry.

11. Whilst the appellant was contesting his extradition in the United Kingdom, his wife applied for citizenship. She was told by the respondent that she needed to prove she was Kosovan; and to prove her identity. The appellant's wife thereupon withdrew her application. In 2014, however, she applied again, this time as an Albanian citizen, along with her eldest son. The respondent refused the wife's application but allowed the application of her son.

12. On 18 December 2015, the appellant applied for indefinite leave to remain, this time using his true identity and nationality. On 9 February 2017, the respondent made a decision that the appellant should be deported from the United Kingdom. The solicitors who were representing the appellant at the time provided reasons why he should not be deported, stating that the appellant's children would remain in the United Kingdom if he were returned to Albania.

B. THE APPEAL TO THE FIRST-TIER TRIBUNAL

13. The challenge to deportation was treated by the respondent as a protection and human rights claim made by the appellant. On 19 December 2017, these claims were refused by the respondent. The appellant appealed. On 24 August 2018, the appellant's appeal was heard by First-tier Tribunal Judge Law, with the appellant being represented by leading and junior Counsel. The appellant's appeal was dismissed by the First-tier Tribunal on 4 September 2018.

14. In his decision, the First-tier Tribunal Judge noted that the appellant claimed international protection on the basis that he said a blood feud existed between him and the family of his murder victim in Albania. The appellant's human rights claim was based upon his private and family life in the United Kingdom; in particular, with his wife and six British citizen children. Five of his children were born in the United Kingdom in 2000, 2003, 2007, 2011 and 2015 respectively.

15. The First-tier Tribunal Judge noted that the appellant said that he had been attacked by the victim. The judge noted, however, that the appellant had said he "pleaded guilty to the charge of murder" and that "he says he was not represented" (paragraph 27). Having regard to the judgment of the Divisional Court (misdescribed by the First-tier Tribunal Judge as the Court of Appeal), the judge was "not satisfied that the appellant's conviction for murder was a miscarriage of justice".

16. At paragraph 32, the First-tier Tribunal Judge found that, after considering the evidence, he was not satisfied that the blood feud existed. No-one had been killed since the alleged blood feud was supposed to have started in 1994 with the killing of the victim by the appellant. The judge found that the appellant was not afraid of a revenge attack, when he was able to leave prison in 1997, because he went home and stayed there for several months. Despite the appellant's claim that he had nowhere

else to go, the judge found that he could have relocated internally to another part of Albania if he really did have a subjective fear of the victim's family (paragraphs 34 to 36). The credibility of the appellant's case was "seriously undermined" according to the First-tier Tribunal Judge, by reason of the fact that the appellant did not raise the issue of a blood feud until the section 120 notice was served in February 2017. The appellant said that this was because he felt safe in the UK; but he also said no day went by without him thinking that this could be his last day and that he may be killed in the United Kingdom. The First-tier Tribunal Judge regarded that statement as inconsistent with his claim to feel safe in the United Kingdom.

17. At paragraph 38, the judge found that the appellant's credibility was "further undermined, equally seriously, by his use of deception". The judge referred to the repeated use of a false name and nationality, based on an entirely different scenario; namely, that the appellant would be at risk from Serbs in Kosovo. The judge noted that the appellant had also admitted instructing his wife to make her own application in a false identity.

18. Overall, therefore, the judge concluded that the appellant's claim to be at risk of serious harm as a result of a blood feud, if returned to Albania, was not credible. The judge then went on to consider the Article 8 claim based on private and family life. The judge concluded that there were "no very compelling circumstances over and above those described in paragraphs 399 and 399A of the Immigration Rules, despite considering cumulatively all that has been said on his behalf on the effect on his family and the possible effect on his health" (paragraph 68).

C. EARLIER PROCEEDINGS IN THE UPPER TRIBUNAL

19. Permission to appeal to the Upper Tribunal was granted by the First-tier Tribunal. The appeal came before Upper Tribunal Judge Pitt on 23 April 2019.

20. Upper Tribunal Judge Pitt dismissed the appellant' s appeal against First-tier Tribunal Judge Law's decision to dismiss the appellant's appeal against the refusal by the respondent of the appellant's protection claim and such part of the appellant's human rights claim as concerned an alleged fear of serious harm in Albania on account of the alleged blood feud. However, Upper Tribunal Judge Pitt allowed the appellant's appeal in respect of Article 8 of the ECHR. She set aside that part of the First-tier Tribunal Judge Law's decision. She recorded that the Article 8 decision in respect of the appellant should be re-made in the Upper Tribunal.

21. Before Upper Tribunal Judge Pitt, the appellant had been represented by the same leading and junior Counsel who had appeared on his behalf in the First-tier Tribunal. On 19 June 2019, however, when the matter came before Lord Boyd of Duncansby and Upper Tribunal Judge Craig, the appellant was represented by Ms Naik QC and Ms Foot. Ms Naik submitted to the Upper Tribunal that the appellant said he was acting in self-defence and was unrepresented at the time when he pleaded guilty to the murder in Albania. She submitted that it was, accordingly, necessary for the Upper Tribunal to consider the safety of the Albanian murder conviction. She persuaded the Upper Tribunal that the case should be adjourned "to obtain expert evidence on the Albanian justice system at the time of the original conviction so that the issue of the safety of the conviction can be put before the Tribunal and deliberated upon" (paragraph 5 of Lord Boyd's Note of Hearing). Lord Boyd's note stated that the Upper Tribunal "cannot see" how it could trial "the circumstances in which the killing occurred" in 1994. However, "the safety of the conviction may arise from the state of the Albanian judicial system at the time where somebody who says he was unrepresented and was minded to plead guilty ended up pleading guilty to murder in circumstances which had they occurred in this country may very well not have occurred"(paragraph 7 of the note).

D. PRESENT PROCEEDINGS IN THE UPPER TRIBUNAL

(a) Reports

22. The matter was, accordingly, adjourned. In September 2019, Professor Daci, an Albanian attorney, produced an "Expert Opinion" on the case of the appellant. One of the appellant's questions for Professor Daci was the following:-

"The state of the criminal justice system in 1994 at the time [the appellant] was convicted of murder, please address any issues of corruption, lack of resources, etc., amongst the police, prosecution authorities, and judiciary, in [the appellant's] district of Tropoje in particular and/or more widely in Albania".

23. Professor Daci said, in response to this question, that in 1994 Albania had a clear inquisitorial procedural system with a right to a fair trial but that the implementation of this in practice was "not effective" and "illusory". Professor Daci thought that it was "possible" that the judges who tried the appellant's case in 1994 might have become judges solely by attending a six-month course. He noted that he had "seen the Supreme Court judgment in this case, but it does not include the names of the first instance judges".

24. Professor Daci was also asked whether there was an automatic right to legal representation in a case such as murder. Professor Daci said that the Criminal Procedure Code provided for automatic legal representation but it was not "routine practice at that time".

25. A further matter on which Professor Daci was asked to opine was this:-

"The plausibility of [the appellant's] account of events, including being told to plead guilty to a murder charge in the absence of legal representation".

26. Professor Daci said that being told to plead guilty was a phenomenon still present in Albania. It was a tactic of the police to resolve the case with a confession. The use of ill-treatment, including the use of force or the threat of force during the investigation of serious crimes such as murder, "was a standard practice until few years ago". Therefore, he presumed that coercion or other ill-treatment "could have been used against [the appellant] during the investigation and that pleading guilty in this context might have been the best option suggested to him".

27. The reference to obtaining a confession through ill-treatment requires to be considered in the context of a witness statement of the appellant, signed on 14 November 2019, in which he described in considerable detail a named police officer torturing him by beating and burning his hand with cigarettes, in order to persuade the appellant to plead guilty to murder, on the basis that he would not receive a conviction of more than eight years' imprisonment, with the result that he would in practice be free within three years.

28. On 13 November 2019, Dr Labeeb Ahmed produced a psychiatric report on the appellant. Dr Ahmed was instructed to report on the appellant's current mental health and whether this was "consistent with his account of torture whilst in police detention in Albania". The report noted that the appellant told Dr Ahmed that his mood had been "low since he was attacked in 1994" and that he had "fear of attack from the family of [the victim]", which led him to be hypervigilant. He would "constantly [look] at the window at home to make sure his family is safe" and that "at times at night, his body gets tense". He reported "repeated disturbing memories and thoughts related to the attack

from [the victim] and the torture from police in Albania. He constantly relives the torture he went through and gets upsets (sic) when he is reminded of it".

29. Dr Ahmed found that the appellant "is suffering from post-traumatic stress disorder and mixed anxiety and depressive disorder", with flashbacks and nightmares "which are related specifically to the torture during interrogation by police and the attack by [the victim] in Albania. He constantly relives the torture he went through and gets upsets (sic) when he is reminded of it". Professor Ahmed considered that returning the appellant to Albania "is likely to worsen his symptoms and due to risk of harm from [the victim's] family members and due to separation from his wife and six children".

30. Dr Antonia Young, an anthropologist and country expert, produced a report in November 2019. Her conclusion was that she "can understand that [the appellant] does fear reprisal from the [victim's] family, despite finding that this blood feud is no longer active". Dr Young found the appellant's "account to be plausible, including his being told to plead guilty to a murder charge in the absence of legal representation. The advice was given at an early stage of Albania's sudden change from strict communism to its development of democracy". She considered that, if returned, the appellant's life "would be placed at great risk" from blood feud aggressors, criminals and trafficking gangs "noting his vulnerability, as a family man attempting to avoid further aggression not only to himself but also to his family".

(b) The record of the District Court of Tropoje

31. Although Professor Daci was, it seems, aware in September 2019 about the appellant's claim to have been tortured in police custody in Albania in 1994, and forced to confess, his September 2019 Opinion was, clearly, written without reference to a document that has been in the possession of the appellant, and his various advisers, for many years. This is a record of the District Court of Tropoje's decision dated 26 October 1994, with certified English translation. This document was produced in connection with the extradition proceedings. It has been in the possession of the appellant's current solicitors since they were instructed in 2017. It has also been in the respondent's possession, in connection with the appellant's claim to international protection, since 2009.

32. The document records the names of three judges as having been present at the appellant's murder trial. It also records the appellant having a defence lawyer, one Pranvera Doci. The document records the defence lawyer as requesting the offence to be redefined as "that of intentional serious injury"; and as additionally requesting the court "to consider [the appellant's] family status and his relatively young age and his low intellectual level".

33. The document records in detail the facts surrounding the offence. In essence, the appellant's car broke down at night. He was shown to the house of a mechanic, the victim, who agreed to repair the car. The victim's wife was a few metres behind the victim and the appellant, as they made their way to the car. There was then a struggle, during which the appellant "pretends that the victim attempted to take something out of [his] belt and for self-defence he took the knife and stabbed [the victim]". The victim's wife said that the victim did not have any knives with him at the moment of the fight. The court found that the appellant's claims during the hearing and the claims of the defence lawyer "having to do with a serious intentional injury and counteraction to the actions of the victim, were not certified during the hearing and as regards the illegal possession of weapons, the defendant pretends that he did not know that carrying a knife inflicts criminal liability, which does not exclude him from the criminal liability". The court convicted the appellant of "the criminal offence of intentional murder". It had regard to various mitigating factors, including his relatively young age and low educational level as well as "his family status". The court sentenced the appellant to fifteen years'

imprisonment. The decision ended by recording that the appellant had a right of complaint to the Court of Appeals of Tirana.

34. The belated disclosure to the Upper Tribunal, in these proceedings, of the District Court of Tropoje's decision of October 1994 is dealt with by the appellant in his 14 November 2019 witness statement, as follows:-

"34. I did not have any form of legal representation during the police investigation, I also did not have any representation at my hearing at the District Court of Tropoje on 26 October 1994, when I was convicted of murder.

35. I have read the judgment of the District Court of Tropoje from 26 October 1994 for the first time recently.

I believe this document has been in my case files but I have never engaged with it until recently because the issue of my conviction in 1994 has never been a key part of my case until now. I am deeply concerned by its contents and I believe that the judgment is fabricated. However, given the way I was treated during the investigation I am not surprised.

36. I would like to mention that it is very hard for me to believe that anybody could believe that there was any justice in the content of the District Court of Tropoje decision dated 26 October 1994. Nobody, not the prosecution, not the judge or any investigating officer, asked or enquired about the reason for the murder of [the victim]. I was forced in to saying that I killed him when I did not. The prosecutor and judge were not interested during the court or investigation process to raise this important issue.

37. The judgment states that I was represented at court by Pranvera Doci. This is completely false. I have never met her and do not know who she is. At no point have I been allowed to discuss my case with her or any other legal representative. At no point was I even asked if I wanted a lawyer.

…

39. The duration of my court hearing lasted no more than two hours from my recollection. I was asked to confirm my identity and I gave my account of what happened. I was in a small hearing room, standing between two police officers and the judge was in front of me. The prosecutor Musa Mulkurti was also in the court room as was the brother of [the victim].

40. I am in no doubt that the whole process and the court decision itself has been manipulated and fabricated. As I have outlined above I made a confession under duress after being subjected to torture, inhumane, degrading and barbaric treatment".

(c) Procedural issues

35. The September 2019 report of Professor Daci, the appellant's witness statement of November 2019 (together with that of his wife), the reports of Dr Young and Dr Ahmed and the District Court of Tropoje decision of 26 October 1994 were filed on 19 November 2019. That was four days after the expiry of the deadline set by the Upper Tribunal in its directions (giving effect to a consent order of 31 October 2019).

36. The adjourned hearing in the Upper Tribunal was listed for 9 December 2019. On that day, Ms Naik sought to adduce two further reports. One of these was a report of Dr Andres Izquierdo-Martin, dated 29 November 2019, concerning scars on the appellant's body. The other report was a so-called

supplementary report of Professor Daci. The “scarring report” had been filed and served some seven days before the hearing. Although the report had been filed in breach of the directions, having heard Ms Naik’s explanation, the Upper Tribunal was satisfied – notwithstanding the objections of Mr Gullick on behalf of the respondent – that it would be appropriate for the report to be admitted.

37. The new report of Professor Daci, in which he for the first time was asked to address the District Court of Tropoje decision of October 1994, was supplied to the Upper Tribunal only at the hearing (having been sent by email the previous Saturday). Mr Gullick had not seen it beforehand.

38. As the Upper Tribunal stated on 9 December, the alleged need for this report stemmed from significant failures on the part of the appellant and the appellant’s advisers. As we have already noted, the document had been in the possession of the appellant’s advisers for a great deal of time. The appellant himself should have been aware of it and have drawn it to his present advisers’ attention much earlier than he did. The present solicitors had, in any event, had it since 2017.

39. Having heard the parties’ submissions, we concluded that to admit this egregiously late document would not be in the interests of the overriding objective. On the contrary, it would send entirely the wrong message to those who come before the Upper Tribunal, whether as appellants or respondents, that directions regarding service count for little or nothing. Ms Naik submitted that, if the report was not to be admitted, there could well be submissions made by the appellant in respect of it to the respondent, after the conclusion of these proceedings, in order for the report to be considered in the context of a fresh claim under paragraph 353 of the Immigration Rules. The fact that such a procedure exists is not, however, in our view to be regarded as dispensing with the need for proper procedures to be followed in appellate proceedings (R (Tapalda) v Secretary of State for the Home Department [2018] EWCA Civ 84, paragraph 67 (Singh LJ)). On the contrary, in all the circumstances of this case, the point had come when the overriding objective, as it applies to these proceedings, required the Tribunal to proceed, even if that meant submissions pursuant to paragraph 353 might subsequently be made in respect of the new report.

40. The hearing on 9 December could not be completed in the allotted time and an adjourned hearing was arranged for 31 January 2020. On 13 December 2019, the appellant’s solicitors wrote to the Upper Tribunal to request that its ruling made on 9 December regarding the new report from Professor Daci should be re-visited. The request was resisted by the respondent. Mr Gullick submitted that the fact the hearing had had to be adjourned to 31 January to allow time for final submissions was not a material change in circumstances, such as to make it appropriate to re-open the decision the Tribunal had made on 9 December. The supplementary report was not concerned with new events relevant to the appellant’s alleged fear of harm in Albania, such as a change in country conditions, which it was accepted could be the subject of a successful application. On the contrary, as the solicitors’ letter of 13 December quite properly acknowledged, Professor Daci’s new report is intended to address matters that had long been within the knowledge of the appellant (and his advisers), and which should have been disclosed far earlier.

41. The Tribunal refused the application. If it were needed, support for this stance is to be found in the judgment of the Tax and Chancery Chamber of the Upper Tribunal in Gardner-Shaw (UK) Ltd v HMRC [2018] UKUT 419. In that case, the Upper Tribunal held at paragraph 13 that where there is no material change of circumstances and no prior misleading of the court “it will be a rare case and something unusual that could lead to the important considerations of finality and the proper use of the appeals procedure being displaced in favour of revisiting and varying or revoking an interlocutory order”. The TCC’s finding on this issue was upheld by the Court of Appeal: [2019] EWCA Civ 841.

E. EVIDENCE OF APPELLANT

42. The appellant gave oral evidence. He did so by reference to his November 2019 witness statement and to his earlier statement of 2018 (undated and unsigned in the appellant's bundle). In this earlier statement, the appellant stated that he was acting in self-defence and that he was stabbed and hit over the head with a metal object by the person whose life he took. Despite saying that he acted in self-defence, the appellant also stated that he was unable to "stress enough how sorry and remorseful I am for what happened". The reason he had lied to the respondent about his identity and nationality was because "I continued to fear the family of the man I killed". The statement describes being in a state of constant fear in the United Kingdom from those who had wished to take blood vengeance against him.

43. There is nothing in the first witness statement of the appellant about him being tortured in police custody in 1994. The earlier statement describes how he had "already provided full details of" the killing and that the details "are also fully documented within the papers advanced in the bundle to be lodged by my solicitors and the decision of the court in relation to my extradition".

44. In oral evidence, the appellant said that there was only a single judge at his 1994 trial and there was no lawyer present on his behalf. The appellant had been unable to walk at the hearing and had to be held, as a result of his torture. The appellant was asked why he had not referred to the ill-treatment in detention in his earlier statement; and to the fact that he had been legally represented; and that that he did not have a fair trial and had been forced to plead guilty. The appellant said that "I mentioned this all the time". He was not sure why it was not mentioned in the statement, "this is the truth. I don't know why I did not mention it".

45. The appellant was asked when, in the United Kingdom, he first discussed legal issues around his plea of guilty to murder. The appellant said he did not quite remember. Eventually, the appellant said that every time he had been asked about the 1994 offence "I mentioned this", by which he meant that he "just told the story, told them what happened, chronologically".

46. In cross-examination, the appellant was asked about a report prepared in 2018 by a psychologist. In this report, the appellant said he remembered returning home after the attack on him, and his reaction to it, and reporting the matter to the police. Later, in court, the appellant had said that he killed a man in self-defence.

47. The appellant also told the psychologist that "he would never lose his temper or confront anyone, however provocative they might be". The psychologist regarded these responses as "very much consistent with [the] image of the quiet, family man he appeared to be throughout the course of the interview. There was absolutely no evidence from his responses that [the appellant] has a temper or is liable to react aggressively".

48. The appellant was asked about the letter from Dr Nikfekr, a consultant neurologist, also to be found in the appellant's bundle, in which the doctor recorded the appellant as describing himself as follows:-

"The mainstay of the symptoms is when he is stressed out and is under pressure he starts to 'lose control' … he loses his temper and can become quite anxious".

49. The appellant said that all this happened in the United Kingdom. He had gone to see this doctor about migraines. That was what he meant by losing control. It was put to the appellant that what he

had said to the psychologist about not losing his temper was in order to assist the appellant's efforts not to be deported. The appellant said that it was true.

50. Asked why he had not told the psychologist about the police ill-treatment, the appellant said, "I answered all the questions that other people have asked me".

51. It was put to the appellant that, in 2017, his solicitors had said on his behalf that there was a trial and he had raised self-defence at it. Also, in the detailed submissions of previous leading Counsel, there was no reference to pressure or being told to plead guilty. If he had pleaded guilty, it was strange that he had told the First-tier Tribunal that he did not expect to be convicted. The appellant said he did not remember the details but he had told his story.

52. It was put to the appellant that in his latest witness statement he had said that he had not raised the matter of the District Court judgment because it was not a key part of his case. It had, however, been raised as grounds of appeal in 2018. The appellant said that he had "answered all the questions put to me".

53. It was put to the appellant that he had been aware when he came to the United Kingdom there was a conflict in Kosovo and that he had asserted he was a Kosovan because that gave him a better chance of claiming asylum in the United Kingdom. The appellant denied this. He had given false details because he was fearful of being harmed. Asked if he accepted that he had lied to the court during his extradition proceedings, the appellant accepted he had. He had also lied to the Asylum and Immigration Tribunal. He lied when, in his false identity, he denied knowing the victim of his crime. The appellant said that he accepted all this and he was trying to hide from the murder.

54. The appellant said that no family members had been present in court at the appellant's murder trial. They might have been outside. His wife was at home.

F. EVIDENCE OF APPELLANT'S WIFE

55. The appellant's wife gave evidence. She adopted her two witness statements. In her first statement of 9 August 2018, she described not being able to attend the October 1994 trial of her husband for murder because she was young, scared and upset. She came from an educated family, as did her husband. The appellant had been "genuinely sorry and regretful of what he had done". He "did plead guilty at the first opportunity and never attempted to hide from what he had done". He was also "young at the time when this incident happened". The witness said that she had "never tried to defend what my husband did and it is not my intention to do so now". She only went to see him twice whilst he was in prison because she was "still very angry with him".

56. When she arrived in the United Kingdom, she was told by the appellant to say that she was GG from Kosovo. She described her various applications to the respondent, which had been based on falsehoods, before the one in 2014, when she said that she was Albanian and applied with her son. She accepted that she had "not been honest with the Home Office". She spoke fluent English. She spoke to her children in English and they spoke amongst themselves in that language. She said that the appellant "has not committed any crimes in this country and he has only a single conviction for murder in Albania".

57. The statement continued by saying that the appellant "cannot go out of the house freely. He cannot enjoy normally (sic) family pursuit – like taking the children on holiday, to the park, to school, anywhere. He is constantly afraid for the safety of our family". For the safety of their children "I have to take them to school every day to ensure that they are okay".

58. In her statement of 14 November 2019, she said that “the police kept changing their story – they said it was a fight, then they said that [appellant] was with friends. At this point I knew the statement of events given by the police was fabricated. If I had even suspected that he had killed anyone, I would have and easily could have left him when we were only married for 6 months, however this was not the case”.

59. Cross-examined, the appellant’s wife said that the eldest children did not help at home. She was asked about visiting her husband in prison in Albania where, in her latest statement, she said that her husband’s face had had significant bruising. She was asked why she had not said that in her statement to the First-tier Tribunal. She replied this was probably because she was not asked and therefore she did not say. The appellant had “never wanted to speak about the ill-treatment of the police”. She re-iterated that she had not been asked about his ill-treatment before. She did not think it was important to mention that she had seen him in a state of distress.

G. EVIDENCE OF APPELLANT’S CHILDREN

60. The appellant’s eldest son gave evidence. He adopted his witness statement of 9 August 2018. He said that if his father was deported, it would be another ordeal for the family to deal with. It would also involve risk for the appellant and the rest of the family “because of the ongoing blood feud in Albania”.

61. In oral evidence, the witness said that he spoke Albanian at home. The family conversed in Albanian and English. Asked in cross-examination if, now that he was an adult, he could provide support to his mother if the appellant was deported, the witness said that he could. However, “it would ruin a lot of things”. He took his brothers to school and bought them things. They looked up to him.

62. The witness said that the children looked on the appellant as a role model, “he takes them to school”.

63. Statements from other children of the appellant were relied upon but they were not called to give oral evidence.

64. One of the sons, AC, said that “every day when I was in school and school finished I would look at everyone’s dad and say where my dad but only seen my mum all the time and it make upset a lot (sic)”. Another child, MdC made a statement, however, in which he says “my life with my dad is very pleasant, he takes me to school and picks me up because my mum is really tired and her arm hurts. He takes me shops when I want to and buys me what I want … and takes me everywhere I ask him to”. If the appellant were deported, MC would have to “walk to school which is far and I would not be able to go to my clubs or not even have money to buy the stuff needed for school …”.

H. DISCUSSION

(a) The position where the only criminal conviction relied on occurred outside the United Kingdom

65. In re-making the decision on whether the appellant’s deportation to Albania would involve a breach of Article 8 of the ECHR, it is necessary, first, to identify the approach to be followed where, as in the present case, the only criminal conviction relied upon by the respondent is conviction by a court or Tribunal outside the United Kingdom.

66. Part 5A of the Nationality, Immigration and Asylum Act 2002 provides that a court or Tribunal, which is determining whether a decision made under the Immigration Acts would be a disproportionate interference with Article 8 rights, is to have regard to the considerations listed in section 117B and, in cases concerning the deportation of foreign criminals, to the considerations listed in section 117C (section 117A). Section 117D(2) defines a "foreign criminal" for the purposes of Part 5A as follows:-

"(2) In this Part, ' foreign criminal ' means a person –

(a) who is not a British citizen,

(b) who has been convicted in the United Kingdom of an offence, and

(c) who –

(i) has been sentenced to a period of imprisonment of at least 12 months,

(ii) has been convicted of an offence that has caused serious harm, or

(iii) is a persistent offender" .

67. Since a person in the position of the appellant, whose criminal conviction took place outside the United Kingdom, cannot satisfy section 117D(2)(b), it is common ground that the considerations in section 117C cannot, in terms, apply to him.

68. Paragraphs A398 to 399D of the Immigration Rules relate to "Deportation and Article 8". A398 provides:-

"**A398.** These Rules apply where:

(a) a foreign criminal liable to deportation claims that his deportation would be contrary to the United Kingdom's obligations under Article 8 of the Human Rights Convention;

(b) a foreign criminal applies for a deportation order made against him to be revoked".

69. There is no doubt that the appellant, in these proceedings, is claiming that his deportation would be a breach of Article 8 of the ECHR. Is he, however, a "foreign criminal" for the purposes of the relevant Immigration Rules?

70. In Andell (foreign criminal - para 398) [2018] UKUT 198 Upper Tribunal Judge Coker held that the relevant provisions of the Immigration Rules include not only foreign criminals as defined in Part 5A of the 2002 Act but also other individuals who, in the respondent's view, are liable to deportation because of their criminality and/or offending behaviour. In OLO and Others (para 398 – "foreign criminal") [2016] UKUT 00056, Upper Tribunal Judge Kopieczek held that the expression "foreign criminal" in the Immigration Rules fell to be construed consistently with the definition in Part 5A of the 2002 Act. Although Upper Tribunal Judge Kopieczek was concerned with whether a person who had been convicted of a criminal offence in the United Kingdom fell within the definition, his conclusion, if correct, must mean that the present appellant, who has only been convicted abroad, likewise cannot be a "foreign criminal" for the purposes of the Rules.

71. As a matter of legislative interpretation, we agree with Upper Tribunal Judge Kopieczek's conclusion in OLO. Although Upper Tribunal Judge Coker considered the expression "a person" in paragraph 398 enabled that paragraph and those following it, to apply to any "foreigner" who is also a

“criminal”, there is, we find, no escaping the conclusion that paragraph A398 governs each of the Rules that follows; and that its use of precisely the same expression – “foreign criminal” – as is found defined in section 117D of the 2002 Act inexorably means that the expression is to be construed in accordance with that statutory definition and does not carry the wider meaning described by Upper Tribunal Judge Coker.

72. For the respondent, Mr Gullick did not seek to support the conclusion in Andell. The effect of OLO, on the other hand, is reflected in the respondent’s published policy “Criminality: Article 8 ECHR cases” (online from 14 May 2019). There we find the following:-

“**Deportation on the basis of convictions abroad**

Where deportation is pursued solely on the basis of one or more overseas convictions, the person liable to deportation will not meet the definition of a foreign criminal set out at section 117D(1) of the 2002 Act and will not fall within any of the criminality thresholds at paragraph 398 of the Immigration Rules. This means the claim will be considered outside the Immigration Rules, but the Rules must be used as a guide, because they reflect Parliament’s view of the balance to be struck between an individual’s right to private and family life and the public interest”.

73. Rightly in our view, Mr Gullick points to the following matter as supportive of the position described in the respondent’s policy. If a person applies for entry clearance to the United Kingdom, they must overcome what is set out in section S-EC (suitability - entry clearance) of Appendix FM to the Immigration Rules. S-EC.1.4 provides that an applicant will be refused entry clearance if:-

“The exclusion of the applicant from the UK is conducive to the public good because they have:

(a) been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years; or

(b) been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence; or

(c) been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 12 months, unless a period of 5 years has passed since the end of the sentence.

Where this paragraph applies, unless refusal would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, it will only be in exceptional circumstances that the public interest in maintaining refusal will be outweighed by compelling factors”.

74. S-EC.1.4 is subject to the exception in GEN.3.2(2) of Appendix FM. This provides that the application will, nevertheless, be granted where:-

“… there are exceptional circumstances which would render refusal of entry clearance … a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application”.

75. S-EC.1.4 fell to be considered by the Court of Appeal in MW (United States of America) & Ors v Entry Clearance Officer [2016] EWCA Civ 1273.

76. The Court in MW had the advantage of being able to take into account the judgments of the Supreme Court in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60, which were handed down after the hearing in MW but which elicited written submissions from Counsel in MW.

77. The Court of Appeal had this to say:-

“32. .... the Appellant goes on to submit that there is an equal weight to be attached to the public interest in refusal of entry under these provisions, to that which arises under paragraphs 398 to 399A in the context of deportation. The Respondent rejects this, on two grounds. Firstly, as a matter of construction, paragraph S-EC.1.4 simply does not operate in the same way as paragraphs 398 to 399A. Secondly, the public interest in deportation as expressed in the Rules arises through the will of Parliament, since it is rooted in primary statute (the 2007 Act), whereas the public interest in refusing entry clearance arises from executive policy, meaning that less weight attaches to it.

33. Further, the Respondent argues that there is good sense in the distinction between the two formulations. Parliament can be taken to understand the significance of a twelve month, or alternatively four year, prison sentence passed in the United Kingdom. Such sentences will be a signifier of serious offending. Sentencing practice and the criminal law abroad is very much more variable. Not infrequently, criminal liability and significant sentences may be imposed for matters which do not even constitute criminal conduct in the United Kingdom.

...

35. We are not moved by the argument advanced by Ms Revill for the Respondent based on the ‘source’ of S-EC.1.4. The provisions were laid before Parliament, subject to negative resolution. Once the question no longer arises as to whether they operate as a constraint on judicial consideration of Convention rights, it seems to us unnecessary to examine further whether S-EC.1.4 bears quite the authority of other provisions based on primary statute. The provisions do represent an authoritative statement of public policy, broadly consistent with the 2007 Act and the ‘new rules’, and as such must be considered carefully (and expressly) by a Court or Tribunal considering a case to which they apply.

...

37. In our view the intention behind S-EC.1.4 was to emphasise the public interest in maintaining refusal. The intended meaning was that compelling factors will usually be required to outweigh the public interest in maintaining refusal. That is consistent with the approach in deportation cases. In MF (Nigeria), this Court emphasised that, in considering the deportation of foreign criminals where the provisions of paragraphs 399 and 399A do not apply, then ‘very compelling reasons will be required to outweigh the public interest in deportation’ (paragraph 43). We consider that the policy here must carry similar weight, and the emphasis marked by the phrase ‘very compelling reasons’ is appropriate. It would be surprising if the policy in regard to those living abroad but seeking to enter the United Kingdom were to be more liberal than the policy affecting those already resident here”.

78. The Court, however, was alive to the fact that issues may arise in respect of a foreign conviction and sentence that would not be present in the case of criminal proceedings in the United Kingdom:-

“39. However, we accept that there may be important distinctions in the application of the policy, as Ms Revill has argued. In a deportation case, the UK conviction and sentence arise within a familiar legal system, and can be taken to be reliable indicators of the severity of the criminality, and thus the degree of public interest in deportation. In cases of application for entry, the same does not apply in

all cases. The illustration arose in argument that, in a number of countries, homosexual acts lawful here are regarded as criminal and can be visited with imprisonment for four years or longer. Such circumstances might well be relevant to a Convention or asylum claim.

40. Mr Waite accepted this point, and took us to a document published in April 2016 by UK Visas and Immigration for the guidance of Home Office Staff, the relevant part of which reads:

'**Convictions outside of the UK**

You must only take account of the sentence imposed and not seek to identify what are the comparable offences in the UK.

However, a person may have a sentence for an act which would not constitute a criminal offence in UK, for example, homosexuality or proselytising (to convert someone from one religious faith to another). Such an offence should be treated as an exception.'

41. It follows that where a foreign conviction is based on an act which would not be criminal in the United Kingdom, Home Office guidance recognises that it would be inappropriate to apply the policy laid down. A similar question may arise where a severe foreign sentence is passed in respect of an act which would constitute a criminal offence in this country, but where the sentence is wholly disproportionate to any sentence which might be imposed here: an illustration might be a minor public order offence committed in a country with an oppressive regime. That question does not arise in this case, but the point emphasises the need for care in the application of the policy when considering the facts".

(b) Overall approach

79. We turn to analyse the appellant's Article 8 case by reference to the relevant legal principles. Those just described concern the approach to be taken to the appellant's criminal conviction in Albania for murder, which, unless it can be countered by Ms Naik and Ms Foot, represents a powerful public interest reason for deportation. Besides this, the factors potentially weighing on the respondent's side of the proportionality balance to be undertaken in pursuance of Article 8(2) include the general importance of ensuring that the principles of immigration control are not undermined. Here, the appellant's general immigration history will be relevant.

80. In determining the factors weighing on the appellant's side of the balance, the best interests of the appellant's minor children must be a primary consideration; and we treat them as such. The interests of the appellant's adult children will also be of relevance, as will those of the appellant's wife.

(c) The murder conviction

81. We shall deal first with the murder conviction. Ms Naik submits that, as a general proposition, foreign convictions do not easily transpose into the UK's "consistent and transparent system, whereby the Sentencing Guideline Council determines the sentence range based on aggravating and mitigating factors. The range and sentencing lengths within this system can reasonably be taken to reflect more or less serious offending, and the Rules (which, for example, have a threshold of twelve months and a further threshold of four years)". This submission reflects what the Court of Appeal said at paragraph 39 of MW. It does not, however, take the appellant's case anywhere. Leaving aside the issue of whether the murder conviction was unsafe (to which we shall next turn), on the facts found by the District Court, the appellant's conviction of murder is entirely unobjectionable. He had deliberately,

and without provocation, stabbed a man to death. The sentence that he received cannot, on any rational view, be said to be disproportionate.

82. The appellant's contention that he is remorseful for the killing is, like so much of the rest of his evidence, incoherent at best. Despite past written expressions of remorse, in his witness statements, the appellant's present stance is that he did nothing wrong. He acted in self-defence. He is the victim of a miscarriage of justice.

83. Accordingly, leaving aside the safety of the conviction, the appellant's conduct means that he falls squarely within the ambit of S-EC.1.4. It would, as Mr Gullick submitted, be abhorrent for the appellant to gain any advantage over those seeking entry clearance, who have committed similar offences, by reason of the fact that his presence in the United Kingdom arises only because he entered unlawfully.

84. The appellant's ability to defeat what would otherwise be the consequences of his conviction for murder therefore depends upon him persuading us that his conviction by the District Court is unsound.

85. Taking the evidence as a whole, including the reports which we have described, we are in no doubt that the appellant's belated attempt to attack the basis of his conviction for murder is wholly bogus. It is totally unbelievable that, if there were any truth in the claims, the appellant would not have raised them in the context of the extradition proceedings in 2006/2007. It would have been open to the appellant to attempt to resist extradition under section 87(1) of the Extradition Act 2003 on the basis that there had been a violation of his Article 6 ECHR rights at his murder trial: Foster-Taylor v Prosecutor General's Office of Florence [2019] EWHC 2938 (Admin), paragraphs 18 and 81; Dean v Lord Advocate [2015] HCJAC 52 at paragraphs 20 – 48.

86. The appellant was wholly unable to explain why the matter had not been raised earlier. He was reduced to saying that he had mentioned it to his legal advisers. It is, however, wholly unbelievable that the various sets of professional advisers who have represented the appellant over many years would have failed to act upon such information. That is true not only in relation to the extradition proceedings but also in relation to the deportation proceedings in the Asylum and Immigration Tribunal and the First-tier Tribunal.

87. The appellant's latest account, involving being tortured by the police and forced to plead guilty at a trial before a single judge, where he was without legal representation, also has to be assessed against the background that the appellant has been fundamentally and persistently dishonest in his dealings with the respondent, over a significant period of time. He has, as his immigration history shows, repeatedly made claims involving a false identity and nationality. His only stated justification for this serious dishonesty is that he was attempting to flee a blood feud. That, however, has been rejected by the First-tier Tribunal as lacking credibility and that part of the Tribunal's decision stands. It is particularly noteworthy that, even after the commencement of the extradition proceedings, brought against the appellant in his true name and nationality, he made a further claim for international protection, using the false name and identity.

88. We have, as we have said, reached our conclusions on this matter, having full regard to the reports prepared in respect of the appellant. Professor Daci's report is undermined by the fact that his attention was not drawn to the record of the District Court proceedings. That record stands in stark contrast to the account which the appellant decided he would put forward, as the latest in a sustained series of attempts, stretching back over a decade, to resist deportation by any means at his disposal.

We reject as entirely unbelievable the appellant's claim that he had only read the District Court decision for the first time "recently". His contention that the document is wholly "fabricated" is the only way in which he can seek to evade the damage done to his case by the emergence of the court record in the present proceedings.

89. The report of Dr Young deals almost entirely with the issue of risk on return due to the alleged blood feud, which is not an issue in the re-making of the appeal. It does not seem Dr Young was shown the record of the appellant's trial. Whether or not the prosecutor at the appellant's trial was found guilty of corruption in 2011 for taking a bribe in order to request a lenient sentence, does not begin to cast doubt on the fairness of the appellant's 1994 trial. The same is true regarding the passage in Dr Young's report where she says the judge who was in charge of the murder trial has been recently dismissed from his position having failed to complete his professional examinations. It is significant that Dr Young was asked to undertake research into whether the three judges had been involved in corruption in Albania and that she found no relevant information in this regard in respect of any of them. Being dismissed for not sitting a professional exam, and returning to practice as an advocate, is entirely different from being corrupt. The appellant's case is that the record of the proceedings is wholly fabricated. It is not his case that the proceedings were accurately recorded but that the proceedings were, nevertheless, in some way fundamentally unfair or otherwise unjust. But, even if that were the appellant's case, the evidence does not support it. The fact that the professional participants in the appellant's murder trial may not have been of the highest quality, and that standards in Albania have subsequently improved, does not mean those proceedings should, in 2020, be regarded as unsound.

90. Dr Ahmed's psychiatric report diagnoses post-traumatic stress disorder and mixed anxiety and depressive disorder. We have had due regard to the fact that these are compatible with the appellant having been tortured in police custody in Albania in the 1990s. However, as Mr Gullick points out, these conditions could have arisen as a result of one or more of a number of elements of the appellant's undisputed past, such as being imprisoned for lengthy periods in the Albanian prison system; twice entering the United Kingdom clandestinely, including in a lorry; and being involved in protracted legal proceedings to avoid being deported and, as a result, being physically separated from family in the United Kingdom. One aspect that we do not consider to be material from the appellant's past is his alleged fear of a blood feud from the family of the man he murdered. The First-tier Tribunal found there is no reasonable likelihood that that feud exists.

91. In reaching our conclusions, we have also had regard to the scarring report of Dr Izquierdo-Martin. There is no doubt that the appellant bears the scars upon which he now relies, in support of his belated claim to have been tortured in police detention in Albania. They are consistent with that claim; in particular, the cigarette burns. As with the psychiatric report, however, the appellant's past could account for the scarring, otherwise than at the hands of the police.

92. We have had regard to the fact that, after the appellant was extradited to Albania, the Supreme Court there allowed the appellant's appeal against his conviction in absentia for armed robbery. As we have seen, this was on the basis that a signature, said to be that of the appellant, had been forged. The fact that the appellant was the subject of a false charge and conviction is relevant in deciding whether there is a reasonable likelihood that his murder conviction was also unsafe. The insuperable problem for the appellant, however, is that his successful challenge to the robbery conviction makes it all the more remarkable that he did not similarly challenge before the Supreme Court the validity of his 1996 murder conviction. Ms Naik submitted that the appellant's appeal against his robbery conviction occurred after Albania became a signatory to the ECHR and that the judgment of the

Supreme Court of 2010, to which we have already made reference, emphasising the importance of the ECHR, must be viewed in that context. This does not, however, in any way explain the appellant's failure to raise the murder conviction if there were any truth in the assertion that he had been tortured by the police into pleading guilty rather than, as the record states, unsuccessfully raising self-defence in a contested trial.

93. Standing back and looking at matters overall, we find that the appellant has not shown that there is a real risk or reasonable likelihood that his murder conviction is unsafe, and therefore must be disregarded. Accordingly, the appellant needs to make out an Article 8 proportionality case that outweighs the strong public interest which flows from the fact that the appellant is a convicted murderer.

94. Because the appellant has been convicted and sentenced to imprisonment of at least four years, if he were seeking entry to the United Kingdom, S-EC.1.4 would make his exclusion conducive to the public good, regardless of the length of time that had passed. In view of what we have said about the appellant only being in the United Kingdom because he has unlawfully entered it, we reiterate that the approach taken in entry clearance cases ought to guide the assessment of the public interest in the appellant's removal by means of deportation. This means that the appellant must show "unjustifiably harsh consequences" for him, his wife, and/or children (both minor and adult) in order to defeat deportation.

(d) The factors weighing in favour of the respondent

95. We adopt the "balance sheet" approach commended by Lord Thomas in Hesham Ali (at paragraphs 82 to 84). We look first at the balance lying on the respondent's side.

96. Although the public interest in deporting the appellant as a murderer is strong, we accept that the strength of the public interest is not a fixity. It may vary between cases: Akinyemi v Secretary of State for the Home Department [2019] EWCA Civ 2098 at paragraph 50. A relevant factor in the present case is the length of time since the appellant killed his victim. The appellant was a young man in his 20s when he committed the murder. He is now 46. He has, as far as we are aware, no criminal record in the United Kingdom. The appellant's ability to plead passage of time is, however, negated by the following factors. First, the appellant entered the United Kingdom unlawfully, following which he sought to prolong his stay by making false claims in respect of the alleged blood feud between him and the family of his victim. Secondly, murder is one of the very gravest crimes that can be committed in any human society. Its significance is much less susceptible to diminishment over time than in the case of other offences. Third, the appellant's stance on remorse is hopeless. Despite prior protestations of remorse from the appellant and his wife, the appellant's present position is to deny wrongdoing on his part, ascribing all blame to his victim and the Albanian justice system.

97. For these reasons, the public interest in deportation is undiminished. There is, however, as we have already noted, a second aspect to the public interest in removing the appellant from the United Kingdom. This lies in his repeated and flagrant abuse of immigration laws, including those which give effect to the United Kingdom's international responsibilities in the refugee and human rights spheres. Public confidence in the respondent's system of immigration controls would, we consider, be seriously damaged if this particular appellant were able to succeed, in the absence of truly compelling human rights factors involving himself and/or his family. We therefore turn to consider the strength of those countervailing factors.

(e) The factors weighing in favour of the appellant

98. The appellant is said to run a successful carwash business in the Midlands. How he does this, given his circumstances, was unexplained. We are, nevertheless, prepared to accept that it is more likely than not that he does so. This, however, runs against the claim of the appellant and his wife that the appellant "cannot go out of the house freely" (wife's statement of 9 August 2018). The appellant's account of living in fear from Albanians seeking to pursue a blood feud against him is, as we have already emphasised, false. The evidence adduced on behalf of the appellant is here, as elsewhere, contradictory. His wife's statement asserts that the appellant cannot take their children to school or, for that matter, anywhere else. The child MdC, however, says in his 2018 statement that "my life with my dad is very pleasant, he takes me to school and picks me up because my mum is really tired and her arm hurts".

99. Insofar as the evidence from the children articulates a concern that, if the appellant were removed to Albania, he would be at risk from the blood feud, this evidence has, we find, either been composed in the light of pressure from the appellant and his wife; or else is the genuine concern of children who have, regrettably, been fed untruths by their parents. For the purposes of assessing the strength of the appellant's case for resisting deportation, we are prepared to follow the latter approach to the children's evidence.

100. We were impressed by the oral evidence of MC, the appellant's adult son. He too confirmed that the appellant takes the other children to school and provides them with support. Overall, the picture given by MC is one of a normal family, involving both adult and minor children and their parents in a loving and mutually supportive household.

101. Significantly, MC confirmed that, contrary to the position when the appellant was extradited and MC was aged 11, he would, as a 21 year old, be able to assist the appellant's wife in helping with the other children, if the appellant were to be deported. We accept that, as MC said, deportation "would ruin a lot of things". The fact of the matter is, however, that the state of the family is now such that the appellant's wife would be able to cope better than she did when the appellant was extradited when there was no evidence adduced to show that the family had suffered significant and long-lasting problems.

102. We have had regard to the report of Mr Forrester, an independent social worker, dated 8 August 2018.

103. Mr Forrester's report accepted, at face value, the appellant's story about the blood feud. Mr Forrester quite properly said that "naturally if there is information not known to me then I cannot argue my point of view correctly". That is right. Mr Forrester is not party to the full evidence.

104. Unfortunately, however, Mr Forrester's report is remarkable for containing passages which frankly do not belong in the report of an expert witness. There is, for example, this:-

"… If what I know are the full facts then it is reasonable to conclude that the Home Office cannot continue to work with [the appellant] on the basis of 'what if' again meaning what if he murders someone else (sic).

They must undertake a risk assessment and make decisions based on evidence and not on assumptions or a media story. There must be a better way to manage perceived risks beyond seemingly knee-jerk, panic responses to media stories.

The UK no longer practises Corporal punishment (sic) therefore other British murderers who have served their sentences and have been released must be living amongst us in the community without

the assumption they will commit another murder. In most cases they are deemed to be reformed, sent back into the wider community and allowed to get on with their lives. So the question must be why is [the appellant] assumed to be a greater risk.

I know [the appellant] is not an EU national but he has been living in this country for over twenty years, it therefore makes little sense if he has not committed any crimes in the UK to now deport him after 20 years. This act is clearly going to destroy his family".

105. Later on, we find the following:-

"It is vital that the court does not become complicit in supporting a hostile and inhumane immigration service who are naïvely replacing one wrong committed by [the appellant] with another being done to his children by the state".

106. The comment that deportation would "destroy" the family is, we consider, both hyperbolic and finds no proper reasoning in the report.

107. The assessment of the effect of deportation on the appellant's wife is, likewise, intensely problematic:-

"It is my assessment that the deportation of [the appellant] would be devastating for [the appellant's wife] as she does not want to be made to care for her children on her own. She has never trained to do any jobs, so she would find it very hard to secure meaningful employment that would pay her enough wages to enable her to meet the living expenses of her family.

I am also of the opinion [the appellant's wife] will spiral into deep depression very quickly because culturally, I did not assess her as someone designed to function as a single parent. Her outlook is that her family is priority and both parents are the head of this union within which she has a role and [the appellant] has a role".

108. Absent from this analysis is any consideration of whether the appellant's wife was destroyed "morally and emotionally" by the appellant's extradition to Albania, at a time when there were no adult children to help look after their siblings. There is no indication also that Mr Forrester is a psychiatrist who can opine that the appellant's wife will "spiral into deep depression". The fact that a wife has a cultural expectation that she would not be required to secure gainful employment is, moreover, not a factor that is likely to carry significant weight. It certainly does not in this case, where there is no indication that the appellant's wife, who says she can speak English fluently, could not look for work. In any event, it is a commonplace of cases of this kind that family members of deportees may have to access relevant state benefits.

109. Mr Forrester's report further undermines the appellant's present stance regarding the murder. Mr Forrester recorded that the appellant "is deeply remorseful about what happened in his past and has now engaged himself in his religion, praying every day as part of a structured way of managing his life in a calm and peaceful manner". There is nothing in the rest of the evidence about the appellant turning to religion. As we have already seen, the appellant's alleged remorse comes and goes, according to what he perceives to be the nature of his audience.

110. Ms Naik submitted that, since there are four minor children, the harshness of deportation must be "stronger (by a factor of four) than it would be if [the appellant] had one child only". That mathematical calculation is, we consider, an inappropriate way of assessing matters. The effect on each child must be examined. The interests of each child must each be a primary consideration. There

is no reliable evidence that the deportation of the appellant would have an effect on any of the minor children (aged 15, 12, 8 and 4) that could be characterised as unduly harsh. That is not, of course, to say that the children would not be extremely upset if the appellant were to leave their home. However, none has any identified special needs or particular vulnerabilities. We remind ourselves that there will, inevitably, be a "degree of harshness" involved in deportation of a family member: Secretary of State for the Home Department v PG (Jamaica) [2019] EWCA Civ 1213 at paragraph 34.

111. The fact that there are several children involved can, of course, be relevant if there can be shown to be a particularly serious effect on one child, which may indirectly impact on the others. The same is true of other family members, such as the appellant's mother. If she were likely to suffer profound depression, as Mr Forrester contends, then that would be likely to impact on the children. There is, however, nothing of this kind here. On the contrary, we accept the evidence of MC that he could and would help the other children, in the event of the appellant's deportation. We have heard nothing to indicate that the other adult child, aged 19, would be unable to act similarly.

112. Although the children may, for a short time, be concerned about the appellant's physical wellbeing, if returned to Albania, on the basis that they have been made by their parents to think that the appellant is genuinely at risk, the children will soon realise that this is untrue.

113. Ms Naik submitted that the appellant, having been prescribed medication for anxiety, would face additional difficulties accessing appropriate support for his mental health. In fairness, this was not a matter which she emphasised in her oral submissions. Any anxiety that the appellant might have about his deportation would, of course, have ceased. There is no evidence at all to show that he would be unable to access relevant healthcare in Albania, in order to treat any remaining (or newly arising) anxiety. The same is true of the appellant's other health problems, as described to Dr Ahmed.

(f) Striking the balance

114. The outcome of the proportionality balancing exercise is, we find, firmly in the favour of the respondent. The best interests of the appellant's minor children are, clearly, that he should stay living with them in the United Kingdom. The evidence, however, fails by a significant margin to show that it would be unduly harsh on each or all of them, if the appellant were to be deported. The same is true of the appellant's wife and the adult children.

Decision

The appellant's human rights appeal, by reference to Article 8 of the ECHR is dismissed.

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 his 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.

Signed  Date : 23 April 2020

The Hon. Mr Justice Lane

President of the Upper Tribunal

Immigration and Asylum Chamber

ADDENDUM

1.
Following an application by News Group Newspapers Ltd and the hearing of submissions by relevant parties at Field House on 30 November 2020, the Tribunal (President, UTJ O'Callaghan) lifted the anonymity order previously granted in this matter. The decision was subject to various orders staying its coming into force, the last of which expired on 2 July 2021.

2.
By an Order dated 11 January 2021, having considered written submissions filed and served by the applicant and respondent, the Tribunal stayed its decision to lift the anonymity order consequent to the respondent having filed an appeal with the Court of Appeal in respect of the Tribunal's substantive consideration of his article 8 appeal: [2020] UKUT 00187 (IAC). The Tribunal ordered that the decision to lift the anonymity order would take effect at the end of the period of ten working days after the date on which the Court of Appeal informed the respondent of its decision on the application for permission.

3.
By an Order dated 19 February 2021 Elisabeth Laing LJ refused the respondent permission to appeal from the order in [2020] UKUT 00187 (IAC). She found no reason to interfere with the Tribunal's subsequent order that the respondent continue to be anonymised until ten working days of her decision on the application for permission to appeal. The tenth working day was 5 March 2021.

4.
The respondent filed an application for judicial review challenging the Tribunal's decision to lift the anonymity order and applied for interim relief (CO/809/2021). By an Order dated 5 March 2021 Linden J stayed the Tribunal's decision to lift the anonymity order pending determination, on the papers, of the application for permission to apply for judicial review.

5.
By an Order of Ms. Margaret Obi, sitting as a Deputy High Court Judge, dated 22 June 2021, the respondent was refused permission to challenge the Tribunal's decision to lift the anonymity order and the application was certified as totally without merit. The Order of Linden J was discharged. The decision of the Tribunal to lift the anonymity order made in respect of the respondent was stayed until seven days after the date of service of the Order. The Order was served on 25 June 2021 and the stay imposed by the Deputy Judge expired on 2 July 2021.

6.
The decision of the Tribunal previously reported as SC (paras A398-339D: ‘foreign criminal’: procedure) Albania [2020] UKUT 00187 (IAC) will now be reported as Cokaj (paras A398-339D: ‘foreign criminal’: procedure) Albania [2020] UKUT 00187 (IAC)

Signed:  **Date: 19 July 2021**

The Hon. Mr Justice Lane

President of the Upper Tribunal

Immigration and Asylum Chamber