

Yousfi v. Secretary of State for the Home Department

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YOUSFI v SECRETARY OF STATE FOR THE HOME DEPARTMENT (UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES INTERVENING)

Immigration Appeal Tribunal

His Honour Judge Cotran (Chairman), Mrs S. I. Hewitt and Mrs J. M. Abrahams JP

1 April 1997

Asylum - Extent of a State's duty to protect citizens against persecution - Algerian- Whether the GIA are agents of persecution - UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, para 65

The appellant, a national of Algeria, arrived in the UK on 8 February 1996 via France and applied for asylum on 12 February 1996 claiming that he was at risk of being persecuted by Islamic militant groups, in particular the Group Islamique Arme (GIA). The Secretary of State refused the appellant's appeal on 12 March 1996 and stated, inter alia, that, first, the Convention relating to the Status of Refugees 1951 did 'not impose an obligation upon the Algerian authorities to provide absolute protection to its citizens', and, secondly, the Algerian government's obligations were not higher than 'a duty to take all reasonable steps, having regard to its means and resources and to the circumstances in Algeria at the time'. The appellant appealed to a special adjudicator who, despite finding the appellant to be a credible witness and accepting that the appellant's family had been harassed by the GIA, dismissed the appellant's appeal on the grounds that (a) the Secretary of State's aforementioned formulation of the obligations imposed upon the Algerian authorities was correct, and (b) the GIA were not 'agents of persecution'. The Immigration Appeal Tribunal granted the appellant leave to appeal against the special adjudicator's determination.

Held - allowing the appeal -

(1)The correct test was not whether a State had taken all reasonable steps to protect its citizens against persecution having regard to its means and resources and to the circumstances in the State at the particular time, but was whether, viewed objectively, the domestic protection offered by or available from the State to the appellant was or was not reasonably likely to prevent persecution, or alternatively, whether the State was able to provide effective protection against persecution. Accordingly, both the Secretary of State and the special adjudicator had applied erroneous tests in relation to the issue of the Algerian authorities' ability to protect the appellant from the GIA.

(2)Although persecution is normally related to action by the authorities it may also emanate from 'sections of the population' or 'local populace' that do not respect the standards established by the laws of the country concerned. The GIA were, therefore, clearly agents of persecution and the special adjudicator was wrong to hold otherwise.

International Treaties, Conventions and documents referred to in judgment

Convention relating to the Status of Refugees 1951 and Protocol of 1967, Art 1A(2) United Nations High Commissioner for Refugees' *Handbook on Procedures and Criteria for Determining Refugee Status*, para 65

Mr P. Jorro (Refugee Legal Centre) for the appellant

Mr D. Bruce (Home Office Presenting Officer) for the respondent

Mr R. Towle for the UNHCR

HH JUDGE COTRAN (CHAIRMAN): The appellant is a citizen of Algeria born on 9 March 1971. He appeals from a determination of a special adjudicator, Mr I. S. Kulatilake, who dismissed his appeal from a decision of the Secretary of State refusing him asylum in the UK.

The appellant arrived in the UK on 8 February 1996 via France and applied for asylum on 12 February 1996, 4 days after. He stated he feared persecution -indeed, feared being killed by Islamic fundamentalists, in particular the group known as Group Islamique Arme (GIA) - if he was returned to Algeria. The details, set out in the Secretary of State's letter of refusal of 12 March 1996, are as follows:

'You stated that you were an active member of Front de Liberation National (FLN) from 1982 until the end of 1995, with responsibility for organising marches and demonstrations and, as a consequence, became an object of interest for terrorists. You claimed that you were sentenced to death by the Group Islamique Arme (GIA), who associate the current government in Algeria with FLN. You allegedly learned of this death threat from a friend who had seen your name on a poster. You consequently decided to leave Algeria. You further stated that your family (which also supported FLN) had also been subject to intimidation and violence by fundamentalists. You claimed that in 1992 your family home was daubed with slogans. In 1993, you and a brother were allegedly the subject of an assassination attempt by fundamentalists, which left your brother handicapped. Your family allegedly moved to Bouzarea where, in March 1994, armed fundamentalists attempted to break into your family home and fired into the building. As a result of this incident your family decided to split up.'

The Secretary of State then went on to consider what obligation is imposed upon the Algerian authorities to provide protection from the activities of the GIA or other militant fundamentalist groups in Algeria. He said:

The Secretary of State further understood that the Algerian security forces have made substantial efforts to suppress the activities of GIA and other militant fundamentalist groups in Algeria. However, he considered that the 1951 United Nations Convention does not impose an obligation upon the Algerian authorities to provide absolute protection to its citizens. Its obligations cannot be higher *than a duty to take all reasonable steps, having regard to its means and resources and to the circumstances in Algeria* at the time. The Secretary of State also considered that the Algerian government could not be expected to guarantee the complete safety of its citizens in the face of a determined terrorist campaign of violence and intimidation.'

The special adjudicator heard evidence from the appellant, found him to be a credible witness and found that 'he and his family had suffered harassment for their support for the FLN, from the GIA, who considers FLN to be liberal, as opposed to the fundamentalist Islamic State and researched by the GIA'.

The adjudicator then went on to consider para 65 of the UNHCR *Handbook*. He noted that the appellant's fear of persecution did not emanate from the government and authorities of Algeria but from the GIA; but that para 65 recognised that 'where serious discrimination or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, *or prove unable, to offer effective protection*'. The adjudicator then said that the appellant argues that the Algerian authorities *are unable to offer him effective protection*.

He continued:

'There is no evidence before me that law and order has broken down in Algeria. Having considered the commentaries of MacDonald and of Professor Hathaway, I find the Convention does not impose upon a State an obligation to provide absolute protection to its citizens. I am in agreement with the Secretary of State that the Algerian authorities' obligations cannot be higher than a duty to *take all reasonable steps having regard to its means and resources and to the circumstances in Algeria at the time*.

I find for reasons that appear before, I am unable to find GIA to be agents of persecution.'

Both the appellant's representative, Mr Jorro, and the UNHCR representative, Mr Towle, have argued before us that the test applied by the Secretary of State and the special adjudicator, viz that the obligation of the Algerian authorities to protect its citizens cannot be higher *than a duty to take all reasonable steps having regard to its means and resources and to the circumstances in Algeria at the time*; is erroneous.

They further submit that the finding by the adjudicator that the GIA are not agents of persecution is equally wrong. We agreed with both submissions. As to the latter, the adjudicator seems to have concluded that because the State has not failed in its duty to provide effective domestic protection, then the GIA are not agents of persecution. Paragraph 65 makes it clear that whereas persecution is normally related to action by the State authorities, 'it may also emanate from *sections of the population* that do not respect the standards established by the laws of the country concerned', and later in the paragraph it refers to acts committed by the *'local populace'*.

It is clear that the GIA are indeed agents of persecution under para 65 and the adjudicator was wrong to hold otherwise.

As to the test, we are of the view that both the Secretary of State and adjudicator have watered down the obligation to provide effective domestic protection by saying that the duty is to take *all reasonable steps having regard to its means and resources and to the circumstances in Algeria*.

The real question is not whether the State authorities are doing the best they can in all the circumstances, but whether viewed objectively the domestic protection offered by or available from the State to the appellant is or is not reasonably likely to prevent persecution from, in this case, the GIA, or as para 65 puts it: are the Algerian authorities *able* to provide *effective* protection against the GIA?

If they are unable, then the appellant's fear is well founded and he meets the requirements of Art IA(2) of the Convention, which defines a refugee as 'any person who owing to 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 nationality and is unable or *owing to such fear, is unwilling to avail himself of the protection of that country*'.

In short, it is because the Algerian authorities are *unable* to provide *effective* protection domestically, that the appellant's fear is rendered well founded and he qualifies for international protection via asylum under the Convention.

We are of the view therefore that the special adjudicator seriously erred in his interpretation of para 65 of the UNHCR *Handbook* as read with Art 1 A(2) of the Convention (definition of a refugee).

Having reviewed all the evidence and materials in this case (including the new materials put in on appeal), we have come to the definite conclusion that the appellant qualifies for asylum and the Secretary of State and special adjudicator wrongly held otherwise.

The appeal is allowed.

Appeal allowed.

Adan and Others v Secretary of State for the Home Department [1997] INLR 1

The headnote in this case should read at 1 D:

The tribunal allowed both of the Secretary of State's appeals despite it being accepted that: (a) both appellant's had fled Somalia as a result of a well- founded fear of persecution for reasons which fell within the Convention relating to the Status of Refugees 1951, (b) Somalia remained riven by clan-and subclan-based ethnic conflict involving widespread killing, torture, rape and pillage, and (c) Somalia's infrastructure had broken down to the extent that neither appellant could obtain effective protection from any recognised State authority so that each would face a risk to life upon return to Somalia (if such return were physically possible, which it was not).

R v Secretary of State for the Home Department and Immigration Officer, Waterloo International Station ex parte Canbolat [1997] INLR 198

The first line of the judgment should read (at 200C):

LORD WOOLF: This is the judgment of the court...

R v Secretary of State for the Home Department, Immigration Appeal Tribunal ex parte Robinson [1997] INLR 182

The reference at p 192G to 'paras 18 and 19 of this judgment' refers to *pp* 189F and 190A of that report.

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