Heard at Field House

FM (FIS Amnesty - Seddon report) Algeria CG [2003] UKIAT 00178

On 13 May 2003
Written 19 May 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

. . . . . 11/09/2003 . . . . . .

Before

Mr S L Batiste (Chairman)
Mrs J Harris

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Respondent

DETERMINATION AND REASONS

1. The Respondent is a citizen of Algeria. The Appellant appeals, with leave, against the determination of an Adjudicator, Mr J G MacDonald, allowing the Respondent's appeal against the decision of the Appellant on 8 June 1999 to issue removal directions and refuse asylum. As the decision is dated prior to 2 October 2000, human rights issues do not arise, as decided by the Tribunal in Pardeepan (00/TH/02414)*.

2. Mr S Grodzinski represented the Appellant, and Ms N Finch represented the Respondent.

3. The specific facts of this appeal, as decided by the Adjudicator, are not in dispute. On 5 October 1989, the Respondent joined, for the first time, in a protest demonstration, during which the army opened fire and he was shot in the neck. The bullet remains in his neck today. As a result of this he became politicised. He first joined Hamas but ceased his involvement with them after about a year. He then joined the Islamic Salvation Front (FIS). In early 1992 he took part in a demonstration organised by them in his home town of Blida. Many people, including the Respondent, were arrested. He was held for two weeks in an army centre in a small room underground in very poor conditions. He was tortured extensively to find out which party he belonged to. He

admitted nothing and after two weeks was released, on the intervention of a relative who was in the army.

4. From then onwards he began to participate in military activity for FIS, via its military wing the AIS. He operated primarily in the city of Blida and used explosives to destroy important centres, such as electricity and gas supplies. Public transport facilities were also targeted and on one occasion he helped to burn down a bus depot. The army arrived and there was an exchange of fire, during which there were explosions. He was thereafter involved in a lot of military operations. He claims that he never targeted or killed civilians. During this period he continued to live at home and go to work, and by this appearance of normality, managed to avoid suspicion by the authorities of his AIS involvement. He said that one of the main ways of attracting adverse attention was to leave home, because the authorities would then suspect you had gone to the mountains to join the guerrillas.

5. After 1995, when there was a change of leadership in FIS, and more vigorous counter-measures were taken by the government, the Respondent considered that the situation was getting out of hand. He wanted to live a peaceful life. He left Algeria in 1997. He first went to Tunisia but did not feel safe there and applied for a visa for the UK, but this was refused. He then returned to Algeria and obtained through a contact a passport with an Italian visa. He flew to Italy and spend one week in Naples where he obtained an Italian identity card. From there he travelled through France to the UK and then went to Belfast to join his brother, who is married to a British citizen and has indefinite leave to remain.

6. He claims he did not apply for asylum then because he was afraid of being sent back to Algeria. His brother maintained contact with the family in Algeria on a regular basis. They told him that, after the Respondent had left, the army had come to look for him, and his father had been held for a day or so. They continued to make enquiries about him from time to time. His brother returned on a trip to Algeria in 1998. He was questioned about the Respondent and told them the Respondent was in Italy. The last occasion they came to the house was in 2000. They did not return or make further enquiries thereafter.

7. The Appellant was arrested in Belfast in November 1998 for rape and then claimed asylum. He later pleaded guilty to rape and was sentenced to seven years. He served 50% of his sentence and was released on remission in May 2002. He fears return to Algeria and claims that he would be persecuted.

8. The Adjudicator, who heard the appeal over two days, concluding on 11 June 2001, accepted the core credibility of the account, whilst noting the Respondent's admission of lying about embellishments concerning the destruction of his family home and the death of his sister. His brother gave evidence on his behalf, and there was medical evidence to corroborate his account of having been shot and of torture. The Adjudicator accepted that the authorities had visited his family home to look for him from time to time, the last occasion being during 2000. On this basis, the Adjudicator concluded that the Respondent would be at real risk of persecution on return. He considered Article 1 F (concerning exclusion) but concluded that this did not have a bearing. He also considered Article 33 (2) but, whilst accepting that the Respondent

had been convicted of a particularly serious crime, concluded that there was no evidence concerning future risk of offences in the UK. He allowed the asylum appeal.

9. The grounds of appeal, upon which leave was granted without qualification, essentially raised three points.
    1. The Adjudicator was in error in not considering whether the interest of the authorities in the Respondent's activities was legitimate and whether the Respondent had a fear of prosecution rather than persecution.
    2. The Adjudicator should not have considered Article 33 (2) because this matter had not yet been considered by the Secretary of State and it would become relevant if and only if the Respondent won his appeal.
    3. The Adjudicator erred in finding that Article 1 F. was not relevant.

10. On 17 January 2002, the appeal first came before the Tribunal. It concluded that as the Appellant had failed to take the points on Articles 1F and 33(2) before the Adjudicator, the Appellant would only be permitted to raise arguments on those Articles "on the basis of the matters and arguments put before the Adjudicator." The matter was then adjourned for the Appellant to consider the future conduct of the appeal. The Appellant decided that the only ground of appeal that he would pursue would be whether the Respondent would face prosecution or persecution on return. The appeal came again before the Tribunal on 4 September 2002. However the notice of hearing had not been served on the Respondent, whose Representative indicated that he wanted to rely upon some recent country background reports that had not yet been served on the Appellant or the Tribunal. So the matter was adjourned again with the direction that the Appellant and the Respondent serve all evidence and skeleton arguments, which has been done.

11. The argument for the Appellant as expressed in the skeleton argument and amplified by Mr Grodzinski, can be summarised in the following terms.
    1. The Respondent undertook criminal activities in Algeria but, after he left, an amnesty was declared, entitling him as a former member of FIS/AIS, to an exemption certificate and a relocation package. He can apply for it to the Algerian Embassy in the UK, or in Algeria on return. As a consequence the authorities lost interest in him in 2000 and he will face neither prosecution nor persecution on return. This point was specifically raised before the Adjudicator, but he did not consider it properly or at all.
    2. The Adjudicator did not consider whether the interest in the Respondent by the authorities, if any, would be for the legitimate purpose of prosecution.
    3. Even if the Respondent was prosecuted for some reason, there is nothing in the prosecutory process that would be persecutory.

12. The Tribunal considers that the Adjudicator's failure to address the significance and effect of the amnesty fatally flaws his conclusions. Ms Finch acknowledged that the amnesty point was raised in submissions to the Adjudicator and recorded by him in paragraph 116 of the determination, but argued that this must have been taken into account in his conclusions, even though he made no specific mention of it there. The Tribunal does not agree. The amnesty raises important matters requiring specific attention, which they did not receive. The Tribunal also considers that the Adjudicator's failure to address whether the Respondent would face legitimate prosecution flaws the determination as well. Ms Finch did not argue against this.

13. Therefore the Adjudicator's conclusions are fatally flawed and must be set aside, but as he made clear findings of fact that have not been disputed, the Tribunal can apply these facts in the context of the current objective material, and this we have done.

14. We have before us a considerable amount of objective material and are grateful to Mr Grodzinski and Ms Finch for this. It has enabled us to reach a broadly based and balanced view of the situation in Algeria. Thus from the Appellant we have the CIPU report of April 2003; a country report prepared in December 2002 by the Netherlands Department for Asylum and Migration Affairs; the Europa Survey of Algeria for 2003; a report by the Canadian Department of Citizenship and Immigration of May 2001; and the US State Department background note of February 2002. From the Respondent, we have Amnesty International country reports covering 2000 and 2001, together with three specific notes by them, and a Human Rights Watch report. We also have two reports by Dr David Seddon, who currently holds a chair in Sociology and Politics in the School of Development Studies at the University of East Anglia, who states that he is widely recognised as an expert on North Africa affairs and has previously prepared reports for asylum seekers from various North African countries, including Algeria. One of those reports was dated 15 November 2000 and was prepared for the Adjudicator. The other, dated 27 September 2002, was prepared for the Tribunal.

15. Our assessment of the objective material as a whole can be summarised as follows. Following the end of colonial rule, the principal Algerian nationalist movement, FLN, formed a government in 1962. Arising from economic problems due to the collapse of oil prices in the mid-1980s, a wave of strikes and riots culminated in considerable bloodshed and street demonstrations in 1988. The FIS was established in 1989 in the aftermath of these problems and emerged as the largest and most influential opposition movement, developing a nationwide organisation based on mosques and Islamic organisations. Its promise of social justice and grass roots welfare services appealed to the urban poor and unemployed. In the local elections in June 1990 it gained control of 32 of Algeria's 48 provinces, and 853 of the 1539 municipalities, winning landslide victories in all major cities. By early 1992 it was poised to win the general elections to the National People's Assembly. However the government declared a state of siege and suspended the elections indefinitely. In the widespread unrest that followed, the leaders of FIS were arrested and a pattern of violence began. The government declared a state of emergency and FIS was banned. Many regional and local authorities controlled by it were dissolved. After this, the Islamic opposition to the government became fragmented and radicalised. The main armed groups were AIS (the military wing of FIS), GIA, and GSPC, a splinter from GIA. Violence throughout the country escalated to a very serious degree, with targeted attacks upon government officials and those deemed to support the regime, as well as terrorist attacks on civilians. By 1997 this became particularly severe. GIA was widely held responsible for the massacres of civilians, and AIS began to observe a unilateral ceasefire from October 1997.

16. An appreciation of this history, the initial cause of the conflict, and of the distinction between FIS/AIS and the other terrorist groups, is necessary to understand the peace process initiated by the new President, Abduelaziz Bouteflika, when he came to power in April 1999 with the declared aims of promoting civil concord, the reform of the economy, and the eradication of corruption.

17. On 6 June 1999, AIS extended its unilateral ceasefire by declaring an end to its guerrilla struggle against the government. In July 1999 the President pardoned over 5000 Islamic sympathisers and shortly afterwards put forward a new Law on Civil Concord, which was approved in a national referendum. He offered amnesty for Islamic militants not implicated in mass killings, rapes, or bomb attacks on public places, and reduced sentences for such crimes, provided those responsible surrendered to the authorities within six months i.e. by 13 January 2000. Just before this deadline expired, the leader of AIS announced the disbandment of the movement. Members of the GIA and GSPC also surrendered under the terms of the Civil Concord amnesty and others continued to take advantage of the amnesty, both before and after the expiry of the deadline. In return, on 11 January 2000, the President announced an immediate, full and unconditional amnesty for all AIS members, as well as financial compensation for their families, housing for those whose homes had been destroyed by the security forces, and assistance in securing employment.

18. Thus AIS has discontinued violence altogether and disbanded, and members of other terrorist groups have also taken advantage of the amnesty. The numbers of people who have sought and been granted amnesty have been put variously at between 5000-7000. Of these about 1000 are from AIS, which was always the smaller of the main guerrilla organisations, and the balance has come mainly from GIA. Involvement with FIS is no longer a ground for criminal or extra judicial prosecution. Former FIS members are now in Parliament. Some 600 former militants are now in public service, working as Imams in mosques. Those who live abroad and are entitled to the benefit of the amnesty can apply to their local Algerian Embassy and obtain an exemption certificate and travel back to Algeria undisturbed. Equally they can apply on return to Algeria. Interrogation on return relates to military service or outstanding criminal proceedings. There is no evidence of maltreatment upon return. The Canadian report, confirmed by UNHCR, states that if difficulties for returnees had arisen, this would now be known, and none have been notified.

19. Against these positive developments, has to be set the continued terrorist activity by the remnant of the GIA, who have not accepted amnesty, and other like-minded groups. The level of violence is substantially less than in previous years and is more localised, with the big cities mainly being secured by the government forces. Nevertheless the violence remains at a significant level and the security forces bear down on suspected terrorists. In so, doing human rights abuses by them continue. There were extra-judicial killings, mostly during clashes with armed terrorist groups, though 71 civilians were killed by the security forces during 2002, mainly during protests in and around the Kabylie region. The Algerian government maintains that as a matter of policy disciplinary action is taken against soldiers or policeman who are guilty of violating human rights and that some disciplinary action is taken. However they do not routinely release specific information about punishments of military and security forces personnel and no such data was made public during 2002, although the Algerian government indicated that between 350 and 400 security officials were punished for human rights abuses in 2000. The current US State Department report noted continued reports of police torture and other abuse of detainees during the year, and Amnesty International stated that some persons died in custody from torture, or were executed. There is evidence to suggest that the risk of abuse relates mainly to people suspected of current terrorist activities. The International Red Cross noted a decrease in incidents of

torture, and that the severity of such acts diminished. However many victims of torture hesitate to make public such allegations due to fear of government retaliation.

20. Overall, it is our judgment from this that there is a clear distinction between the terrorist organisations such as GIA who have rejected the amnesty on the one hand, and FIS/AIS, along with other former terrorists who now want peace on the other. FIS had the legitimate expectation of obtaining power through democratic means before the state of emergency began. AIS declared a unilateral ceasefire when the indiscriminate violence against civilians escalated in 1997 and later disbanded. This was the rationale behind the Law of Civil Concord, which reflected the genuine wish of the new government to bring FIS/AIS members and others back into mainstream political life. There are obvious reasons, in the de-escalation of violence, why the government began this process and why it is committed to continuing with it. We conclude there is no direct objective evidence before us that there have been significant material breaches of the amnesty for any FIS-AIS members, and find that if was this was occurring to any material extent there would by now be clear evidence of it.

21. We are aware, in saying this, of the contrary opinion expressed by Dr Seddon, upon which Ms Finch placed much reliance and to which we now turn. As we have said, Dr Seddon is a social scientist, who describes himself as a widely recognised expert on North African affairs. He acknowledges that his last visit to Algeria was in 1993 but maintains that he has kept up-to-date by reason of his reading, studies and contacts. His first report was written on 15 November 2000 specifically to provide assistance for the Adjudicator in this appeal. Mr Grodzinski attacked the report, and the weight that should be given to Dr Seddon as an independent expert, in bluntly critical terms. The reason for his criticism is that, although Dr Seddon was writing a specific report on behalf of a past member of the AIS/FIS, he failed to mention that AIS had declared a ceasefire in 1997 and that AIS had voluntarily disbanded in 2000. Even more seriously, although he was writing in November 2000 he failed to mention at all the pardon, the Law of Civil Concord, or the continuing amnesty, or the many people who had taken advantage of the amnesty by the time he wrote that report. Mr Grodzinski argued that either Dr Seddon was unaware of these developments, in which case his expertise must be doubted, or alternatively if he was aware of them but failed to mention them, his claim to be an independent expert was undermined and he should be regarded as a paid advocate for the Appellant. Ms Finch said that she relied upon the second of Dr Seddon's reports, which was written on 27 September 2002 for the Tribunal and did mention the amnesty. She could not explain why he did not mention the amnesty in his first report.

22. These omissions are extraordinary. Dr Seddon provided a specific report to guide the Adjudicator when hearing this appeal. The facts of the claim were before him and he referred to them. He was plainly aware of the Respondent's involvement with FIS/AIS and the date he left Algeria. We consider that by November 2000 no properly informed and independent expert doing his duty to the court, could have failed to mention the AIS unilateral ceasefire in 1997, the Law of Civil Concord, the disbandment of AIS, and the amnesty of 2000. Ms Finch has offered no explanation. In his second report he had the opportunity to explain why he did not mention these matters in his first report but did not do so. It is likely that the Adjudicator was seriously misled by this first report. The Appellant's representative in oral submissions referred him to the amnesty (as the determination records) but the Adjudicator ignored it altogether in his

conclusions. It may well be that Dr Seddon's report and its omissions contributed to this error.

23. In his second report, dated 27 September 2002, upon which Ms Finch relied before us, Dr Seddon acknowledged that an amnesty was offered to all of the armed opposition groups in September 1999, following a national referendum which supported such action, and a Law of Civil Concord was then introduced, which has resulted in an "undeniable reduction in the level of violence; and reports of arbitrary arrests, prolonged incommunicado detention, torture, disappearances, and unfair trials also diminished markedly." However he went on to state that Amnesty International was informed by Algerian officials in May 2000 that prosecution had been initiated against some 350 people who had surrendered under the Law of Civil Concord; also in some cases people who had given themselves up under the Law of Civil Concord and had obtained certificates of exemption from prosecution, were subsequently arrested and charged with offences for which they had just been cleared." He concluded that the Respondent would still have a well founded fear of what might happen to him on return.

24. Mr Grodzinski attacked this report also on the basis of its inadequate reference to up-to-date facts and of unsubstantiated, misleading and partial conclusions. In particular Dr Seddon's key reference to an alleged Amnesty International statement of May 2000 that 350 people who had been granted amnesty were subsequently charged with offences for which they had been cleared, was flawed. The statement from Amnesty International to which Dr Seddon was referring was not placed before the Tribunal and the comment could not therefore be assessed as to the accuracy of Dr Seddon's observation, or in context. The Amnesty International country report for the year 2000 was before the Tribunal and states that "some of those who were granted certificates were subsequently arrested and charged with offences for which they had just been cleared." Mr Grodzinski observed that there was no mention of any number of such cases, let alone 350, and nothing of this or anything similar has been repeated by Amnesty International in any subsequent report. There is no information about what any of the alleged prosecutions related to, and such arrests as there were may have related to prosecutions begun before the amnesty became unconditional in its scope on 11 January 2000. There is no information about whether any of these cases related to FIS/AIS members. In any event this issue related to an early stage in the reconciliation process and is now out of date. It was out of date when Dr Seddon wrote his report. Dr Seddon did not refer to any of the subsequent evidence including the continuing use of the amnesty by substantial numbers of former FIS/AIS and GIA members without difficulty. He did not explain why the Respondent would not be able to benefits from the amnesty. His references to continuing violence in Algeria, and actions by the government to contain it, do not make clear that FIS/AIS had disbanded and have played no part in it for many years.

25. Ms Finch defended Dr Seddon's second report by saying that he had properly explained what was happening in 2000 and 2001 when the GIA was active and this had led to a reaction by the government. He could not deal with FIS/AIS violence because there was none. He did mention the amnesty, but could not say any more in respect of the risk to the Respondent than he did by referring to the 350 cases of arrests of persons having previously been granted amnesty certificates

26. We do not find Ms Finch's defence of Dr Seddon's reports to have substance. As we have indicated, we find the unexplained omissions in Dr Seddon's first report to be surprisingly inconsistent with the standards expected of an independent expert, and especially one of his expertise. By November 2000, the amnesty and the Law of Civil Concord were important realities on the ground and no informed and balanced assessment of the situation in Algeria by an expert could or should have ignored them. The omissions and weighting in the second report, whilst not as blatant, nevertheless add to the impression given by the first report that Dr Seddon has difficulty in reconciling the role of advocate with that of independent expert. There is no documentary support before us for his assertion that 350 people, granted amnesty, were subsequently arrested and charged. The Amnesty International annual report for 2000 makes no mention of any specific figure, and the whole matter was dropped from subsequent Amnesty International annual country reports, although claims for amnesty continued. We do not consider that an independent expert writing in September 2002 should have placed the weight that Dr Seddon did on a vague assertion relating to May 2000, that has no other independent corroboration. Mr Grodzinski has argued that either Dr Seddon lacks the detailed knowledge he claims, or he has behaved as an advocate rather than an independent expert. In our view Ms Finch has offered no sustainable defence of her expert witness. We cannot believe that Dr Seddon was unaware of the amnesty when writing his first report and considering both reports together we conclude that Dr Seddon's advice, in the matters described above, fell well short of what we would have expected from an independent expert. Consequently we find that we can place no material weight upon the opinions expressed by him in them. We have before us extensive and properly sourced objective evidence from a variety of international organisations and have based our assessment of the country situation in Algeria upon that.

27. In that context, we have assessed the specific facts in this appeal and have concluded that there is no valid reason why the Respondent, whilst he is in the UK, cannot apply to the Algerian Embassy here for an exemption certificate from prosecution under the amnesty. Nor is there any reason why it should not be granted without undue difficulty. On the facts as established he was an FIS/AIS fighter until he left Algeria in 1997 for the UK. He had no connection with the GIA or any other terrorist group. He was not involved in indiscriminate attacks upon civilians. He has not been politically active in the UK. Contrary to Ms Finch's submission, the objective evidence shows that there would be no difficulty in obtaining an exemption certificate from the Embassy on this basis. Indeed a criticism reported in the objective material is that exemption certificates have been given too easily. The main rush of claimants for exemption was during 2000 and at its strongest there may have been some limited transitional difficulties. However the objective evidence does not suggest that it was anything more than this, or that these problems continued to any material degree beyond the summer of 2000, or that a person with the Respondent's history would now be of any continuing adverse interest to the authorities. Many former members of FIS/AIS have been reintegrated into Algerian society and there is a package of support for them on return. We conclude that if the Respondent applies for an exemption certificate from the Embassy before returning to Algeria, he will get it readily. He can demonstrate that he has been in the UK since 1997. His admission of AIS involvement can no doubt be confirmed from the evidence of other former AIS members who have been granted amnesty. Consequently we find therefore there is no real risk that he will face prosecution or any other difficulties with the authorities on return or thereafter, as a consequence of his previous activities or for

any other reason arising on the facts of this appeal. To the contrary, the authorities are keen to reconcile and integrate people such as the Respondent into Algerian society.

28. Ms Finch has argued that the Respondent might not wish to obtain an exemption certificate from the Embassy. We first note that there is no actual evidence before us to support that submission. Ms Finch has suggested without any evidential support from the Respondent or from the objective material that he might be afraid to do so. Alternatively he may believe that he could extend his stay in the UK if he did not so. There is nothing in either of these points. It would be perverse in our judgment if the Respondent did not seek an exemption before return, as it is clear from the objective evidence that he would have no good reason to fear to do so, as many others have done before him. The passage of time since the amnesty declaration is not as Ms Finch argued a cause for concern, but rather a form of security as the system has been shown to work well. Even if, for whatever reason, the Respondent refused to do so, there would still be no real risk of persecution on return. On his own evidence he thought that it was his leaving his home in 1997 that attracted the adverse attention of the authorities, as a result of their suspicion that he had gone to join the terrorists in the mountains. If that is the limit of the knowledge by the authorities of the Respondent's history, then he will be able to demonstrate easily that he left Algeria in 1997 and has been in the UK subsequently. Indeed in 1998 his brother told the authorities that he had left Algeria. If on the other hand the authorities have become aware of his involvement with FIS/AIS, perhaps as a result of information given by other members who have taken advantage of the amnesty, then they will still have no continuing adverse interest in him, given the changes in Algeria since he left and his clear qualification for amnesty. The last interest in him shown by the authorities was in 2000. That would suggest that by then they may have learned of his involvement with FIS, and accepted that he had fled abroad as stated by his brother, and therefore had no continuing reason to be concerned with him given the disbandment of AIS. Under the terms of the Law of Civil Concord, the Respondent would be entitled to a resettlement package and as we have said it would be perverse if he did not seek to take advantage of it. Thus, whether the authorities know of his history or do not, they have no reason for any continuing adverse interest in him and consequently there will be no real risk to him of persecution on return. Even if he were held briefly in detention on return whilst enquiries were made, he will be able to demonstrate that he has been out of Algeria since 1997. The authorities, given the information which they now have following the amnesty about AIS, will be able to check his account and as they have no reason to link him with GIA or other current terrorism, there will therefore be no real risk that he would face treatment amounting to persecution during such detention.

29. For the reasons given above this appeal against the decision of the Adjudicator is allowed, and the appeal by the Respondent against the issue of removal directions by the Appellant following the refusal of asylum is dismissed.

Spencer Batiste
Vice-President