

Heard at Field House
On 3 June 2004
Written 3 June 2004

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

10 June 2004

Before

Mr S L Batiste (Vice-President)
Mrs R M Bray
Mr T A Jones

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr C Jacobs, instructed by Messrs White Ryland
For the Respondent: Mr A Sheikh, Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a citizen of Algeria, appeals, with permission, against the determination of an Adjudicator, Miss A M Cheales, dismissing his appeal against the decision of the Respondent on 29 April 2003 to issue removal directions and refuse asylum.
2. The Appellant's claim can be summarised as follows. He lived in Algiers and joined the police in 1998. He was first appointed to an administrative section, but in July 1999 was promoted to a mobile brigade. His work involved the protection of civilian property and the maintenance of safety in an area. Sometimes he transported prisoners to the police station and prepared their statements and took them to court. In July 2000 he was moved to Dergana, a suburb of Algiers. His work was still with the mobile brigade and he remained there until February 2001. However this area was infested by terrorists and on occasions he and the rest of his troop were involved in clashes with them. He received emergency calls from civilians and informers about the terrorists. He found the situation very risky and his life was often in danger. He never knew from day-to-day whether he would return home in the evening. In February 2001 he was transferred to Hussein-Dey and worked at the police station in an administrative role. He attended to those who were arrested, opening files and taking statements. He took those charged with criminal offences to court. He worked there for six months and was then

transferred to the anti-terrorist section. There he dealt with terrorists who had been granted amnesty in 1999 and kept an eye on them. He worked with the gendarmerie and the military secret police. The military secret police arrested some of the Appellant's colleagues for assisting these terrorists. The Appellant himself was under a lot of pressure in this work environment. He and his colleagues were forced into compromising situations and were often insulted. He became disillusioned with the system and his superiors. He considered that his efforts were not appreciated. He was under too much pressure to work too hard.

3. He had always been on the terrorists' hit list as a policeman but in both October 2001 and February 2002 he received a threatening letter at his home from the GIA. They said he was a tyrant and was harassing ordinary civilians for which the punishment was death. In October 2001 he wanted to get away on the pretext of having a holiday. However his superiors refused leave at that time and he had to wait. After the second letter he decided to leave Algeria and applied for a visa to visit France in February 2002, which was granted in April 2002. The letter in February 2002 from the GIA was from someone known personally by the Appellant as an informer, a Mr Badry. He reported this to his superior and gave him the letter. He was not told to do anything but should remain in barracks until things cooled down. He was informed that the military secret service would be contacted. He remained in barracks where he was safe, but nothing was done.
4. We break off the narrative at this point because there was some dispute between the representatives as to what was meant by "nothing was done". The Adjudicator did not reach any specific finding about this expression. The words appear in the determination only in the description of the claim as recorded in paragraph 11. In paragraph 37 the Adjudicator's finding of fact was that "he was told to stay in the barracks and to wait for some time for the matter to die down." The Appellant could legitimately give evidence that he was not aware of anything else being done. He was not interviewed by the military secret service for example. He was not aware of any action taken against Mr Badry. We cannot speculate beyond the findings in the determination. The Adjudicator accepted the credibility of what the Appellant said to her. He could only speak to what was in his direct or indirect knowledge – that he was not aware that anything was done. That does not mean either that in reality nothing was done as Mr Jacobs has urged upon us, or that we can speculate about the kind of action that might have been taken behind the scenes by the secret police dealing with their informant, as Mr Sheikh has urged upon us. The Appellant's claim is that he was told to remain in barracks where he would be safe for the time being and was informed that the secret police would be informed of the letter from Mr Badry. That is the extent of the claim and the finding of fact.
5. We returned to a narrative of the claim. At this time there were elections and clashes with the Berbers, so leave was again refused. On 26 June 2002 a member of the terrorist group approached the Appellant's home and frightened his mother. She became ill as a result. The Appellant decided he could no longer remain in Algeria. He was depressed and could not function. He realised he was unfit for work. He was asked to remain in the barracks and take time off. He finally left Algeria on 2 August 2002 and went to France. He did not stay there long because he heard rumours that Algerians without status who had applied for asylum were being removed back to Algeria.
6. The Adjudicator concluded the Appellant was credible. He was a serving policeman who had worked with the anti-terrorist section and his name was on a terrorist hit list,

which included all the police officers in his home area. He and other policemen had also received threatening letters. Some had left the country. One had relocated. Another was killed whilst he was off duty, though we have not been told when or in what circumstances. However the Adjudicator dismissed the appeal on the basis that there was a sufficiency of protection available to the Appellant on return to Algeria.

7. The grounds of appeal, as argued before us by Mr Jacobs, challenge the sustainability of the Adjudicator's assessment of sufficiency of protection. Inherent within that assessment is the extent of any risk to the Appellant and the viability of internal relocation, on the facts as established. Mr Jacobs gave us the decision of the Court of Appeal in *Noune* but did not press it, rightly in our view, as it is now well out of date given the improvements in the situation in Algeria to which we shall refer.
8. The Appellant does not claim persecution by the state, but rather by individuals within it, namely the GIA terrorists. His ability to obtain surrogate international protection either in respect of asylum or under Article 3 depends upon whether his home state has in place a system that offers to him a "sufficiency of protection" in terms of the guidance given by the House of Lords in *Horvath*. They essentially approved the test described by the Court of Appeal, also in **Horvath [2000] Imm AR 205**, for identifying what "sufficiency of protection" actually entails. Stuart-Smith LJ put it in these terms;

"There must be in force in the country in question a criminal law which makes the violent attacks by the persecutors punishable by sentences commensurate with the gravity of the crimes. The victims as a class must not be exempt from the protection of the law. There must be a reasonable willingness by the enforcement agencies, that is to say the police and courts, to detect, prosecute and punish offenders. It must be remembered that inefficiency and incompetence is not the same as unwillingness, unless it is extreme and widespread. There may be many reasons why criminals are not brought to justice including lack of admissible evidence even when the best of endeavours are made; they are not always convicted because of the high standard of proof required, and the desire to protect the rights of accused people. Moreover, the existence of some policemen who are corrupt or sympathetic to the criminals, or some judges who are weak in the control of the court or in sentencing, does not mean the state is unwilling to afford protection. It will require cogent evidence that the state which is able to afford protection is unwilling to do so, especially in the case of a democracy."
9. Sadly, whatever measures may be taken by a state, it does not mean that serious crimes will not nevertheless occur. But the occurrence of such crimes is not the test for sufficiency of protection described in *Horvath*. We have therefore assessed the situation in Algeria in the light of the objective evidence before us – and in particular the evolving risk profile for the Appellant there and the sufficiency of protection available.
10. To understand the situation in Algeria and the way it has changed one needs to go back a little in history. Following the end of colonial rule in 1962, the principal Algerian nationalist movement, FLN, formed a government. Arising from economic problems due to the collapse of oil prices in the mid-1980s, a wave of strikes and riots culminated in 1988 in considerable bloodshed and street demonstrations. 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 random terrorist attacks on civilians. By 1997 this became particularly severe. GIA was widely held responsible for a number of very serious massacres of civilians. The objective evidence suggests that they believe anyone who does not support them is an enemy, even if they are neutral. In part as a response to this extreme violence, from October 1997 AIS began to observe a unilateral ceasefire.

11. President, Abdulaziz Bouteflika came to power in April 1999 with the declared aims of promoting civil concord, the reform of the economy, and the eradication of corruption. It is a measure of the perceived progress that has been made since then, that he has just been re-elected in April 2004 in a landslide election victory with 84.9% of the votes cast in an election accepted by international observers as being broadly fair.
12. That progress has been substantial. Back in June 1999, AIS extended its unilateral ceasefire by declaring an end to its guerrilla struggle against the government. In July 1999 the President responded by pardoning over 5000 Islamic sympathisers and shortly afterwards put forward a new Law on Civil Concord, which was then 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.
13. Thus AIS discontinued violence altogether and disbanded, and members of other terrorist groups also took 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 the 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.
14. 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 state of emergency remains in place. However this has to be seen in proportion. The level of violence has reduced progressively and substantially from the peak years of the conflict, when for example in the month of Ramadan in 1997 alone, over 13,000 civilians were killed. Against this, some 1980 people in all died in terrorist incidents in whole of 2001. The latest information contained in the CIPU report of April 2004 is that the level of violence blamed on armed Islamic groups again declined sharply in 2003. According to official Algerian statistics about 900 people were reportedly killed in the year, which included 420 Islamic extremists. The US State Department Report cites press reports offering somewhat different figures - that 1162 civilians, terrorist and security members died during the year, this being a 61 percent decrease in violent deaths from 2002. A further substantial decrease has occurred in the first two months of 2004 with a total of 74 reported deaths in terrorist incidents, which equates to an annual rate of 444. This is a huge advance by the Government, which goes some way to explaining President Bouteflika's recent election landslide.

15. Also of particular relevance to risk and sufficiency of protection is the evidence that the violence has become more localised, with the big cities mainly being secured by the government forces. A report by the Swedish immigration authorities of March 2003 reported
 “It should normally be possible to avoid threats from armed groups by the person concerned going to any of the largest cities which are to be considered as safe. In the present situation, terrorism is not a great problem in the major cities. City such as Algiers, Oran and Constantine are surrounded by police forces.”
16. Other reports quoted by CIPU state
 “The GIA is reported active in large sections of the northern part of the country, notably in the central and Western parts of the country and in the Algiers region especially Mitidja, Medea and Blida.
17. Also of significance are current estimates of the strength and support of the GIA following the amnesty. Different sources place it at 60, fewer than 100, 200 and several hundred. Whilst this is still not a negligible force, the major weakness of the group is that its members have lost the trust of the local population, following the terrible massacres attributed to them. These two factors, coupled with the continuing actions against them by the government, must materially limit their capacity to operate at will.
18. It is in the context of this assessment of the objective evidence concerning the situation in Algeria today that we assess the specific risk to the Appellant, the availability of a sufficiency of protection, and the viability if needed of internal relocation.
19. Mr Jacobs submitted that when the Appellant complain to his superior about the threat from Mr Badry, nothing was done. That is not what the evidence shows. The Appellant was told to remain in barracks where he was safe until things died down and was informed that the threat would be communicated to the military secret police. That is not “nothing”. As we have said we cannot speculate about what the military secret police did in response to the information or even if the information was passed onto them as promised. We have no evidence on that and in fairness the Appellant does not know either. What we do know is that no attempts were made on the Appellant's life.

20. That does not mean at the time he left Algeria he was not at any risk from the terrorists. The objective evidence shows that between 1 and 2 policemen die every month as a consequence of the continuing conflict. A report of March 2003 explains why. It states that "the police constituted a potential target for armed groups as they are in part representatives of the state, and in part have desirable weapons and identification papers which can be used for various purposes." The Appellant himself was on a terrorist hit list along with all the other policemen in his area and received threatening letters as many of them did as well. That is entirely consistent with the objective evidence and demonstrates the risk involved with the job. He said that some of his colleagues had gone to live abroad, another had relocated within the country, and another had been killed whilst off-duty. Given the risks and the pressures that is plausible. It is notable that, according to the Appellant, one of his colleagues chose to relocate within Algeria.
21. At all events, the Appellant also had enough with the pressures and risks of his job and wanted to leave. Whilst he was receiving protection at the time by being told to remain in the army barracks, plainly he did not want to live there indefinitely. The recent report from the Swedish authorities states that the police can leave the service without a problem, and policemen who leave the job without having formally given notice do not risk a penalty or imprisonment. There is therefore no reason why the Appellant should have any difficulties with the authorities on his return. The issue is whether he will be at any real risk from the GIA.
22. Mr Jacobs suggested that the Appellant as an ex-policeman will be just as much risk as he was whilst he was in service, because the threatening letters described him as a traitor and tyrant. Mr Sheikh has argued that his risk profile has reduced dramatically as a consequence of his leaving the police service. We agree with Mr Sheikh. The main risk to a policeman comes from being involved in his day-to-day duties in potentially dangerous conflict situations. Beyond that the objective evidence described above shows that policemen are targeted for attack as symbols of the state and in order to obtain possession of their valuable weapons and police identification cards. By leaving the police service, these risks no longer attach to the Appellant.
23. The issue is whether he will be at any real risk because of his past police service. No other reason has been advanced beyond his activities as a policeman as to why he was targeted in the past or should be targeted in the future. We asked Mr Jacobs if he could show us any specific examples in the objective evidence to demonstrate that the GIA were currently targeting ex policeman. He was unable to do so. This is in marked contrast with the evidence of the risk to serving policeman, which is well recorded. Mr Jacobs maintained that the nature of the threats to the Appellant in the past would not diminish. We do not agree. The objective evidence is that GIA membership is now relatively small and this must impact on their ability to carry out targeted attacks. The objective evidence shows that they have lost the confidence and support of the local population and this must impact upon their ability to gather intelligence. The objective evidence also shows that they draw no distinction between their opponents and neutral bystanders when planning attacks. Plainly attacks on soft targets in areas that are not heavily policed are much easier, for an organisation that is losing its membership and strength.
24. Putting this together, we conclude that whilst there will be some continuing risk to the Appellant from the GIA if for example he were he to have the misfortune to fall into the hands of those who know him, that is a remote possibility today given the GIA's

limited range and scope. It does not constitute a “real risk”, provided the Appellant lives within one of the big cities of Algeria, such as Algiers itself, or Oran or Constantine. Mr Jacobs has suggested that the GIA is active in Algiers, where the Appellant used to live and to where he will be returned. The objective evidence does not suggest that GIA is particularly active in the city of Algiers itself, but rather in some of the suburbs of the Algiers region. In any event if the Appellant were concerned about Algiers and the fact that as a policeman for some years there will be a number of people who might recognise his face, we conclude that he has a viable internal relocation option to either of the other cities mentioned above. There is no evidence that this would be unduly harsh. We do not accept Mr Jacobs' submission that the Appellant would be at any real risk upon arrival at Algiers airport. There is no real risk that the GIA have now in place an intelligence network that would be able to identify him on return, even if they were interested in pursuing him.

25. This leaves sufficiency of protection. On the basis of the objective evidence, we consider that there is in general terms a sufficiency of protection against terrorists available from the authorities in Algeria in the terms defined in Horvath. There is a criminal law in place making terrorism illegal, with sentences commensurate with the crimes committed. There is no class of victim that is exempt from the protection of the law. There is a manifest willingness and ability by the authorities to tackle the problem of terrorism as evidenced by the success that they have achieved thus far.
26. The final question is whether that general sufficiency of protection is available to the Appellant on the facts of this appeal. We consider that it is. He was protected when he sought help from his superior. He was told to remain in barracks until things cooled down. That was an appropriate and effective response in the context of the declining impact of the GIA in 2002 and subsequently. We cannot speculate on what action was or was not taken against Mr Badri. We simply do not know and nor does the Appellant. We agree with Mr Sheikh that if the Appellant returns to Algeria now and settles down in one of the big cities, possibly other than Algiers itself, his risk profile is such that he will not require special protection over and above that being provided by the authorities to the population at large. We have no reason to doubt that should any specific threat emerge, the authorities would respond appropriately. They are as keen as he is to bear down on the remaining terrorists.
27. For all the reasons given above this appeal is dismissed.