

**IMMIGRATION APPEAL TRIBUNAL**

Heard at : Field House  
on : 22nd May 2002  
Dictated : 24th May 2002

Determination Promulgated  
29<sup>th</sup> August 2002  
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Before:-

**Miss K Eshun (Chairman)**  
**Mr A G Jeevanjee**

between

**The Secretary of State for the Home Department**

**Appellant**

and

**Valerie GAHIE**

**Respondent**

**DETERMINATION AND REASONS**

**Representation**

For The Appellant: Ms R Giltrow, Home Office Presenting Officer  
For The Respondent: Ms J Rothwell, of Counsel, instructed by Roelens, Solicitors

1. The Appellant, the Secretary of State for the Home Department, appeals with leave of the Tribunal against the Determination of an Adjudicator (Mr D J B Trotter) allowing the Respondent's asylum and human rights appeals against the decision of the Appellant made on 4th September 2000 to give directions for her removal from the United Kingdom following refusal of her asylum application.
2. The Respondent in this case arrived in the United Kingdom with her husband who has made his own claim for asylum. His application was refused and, according to Counsel, is due to be heard before an Adjudicator in Southshields on 26th June

2002. The Appellant and her husband now have a daughter, born on 5th March 2001.

3. The Respondent's claim for asylum is that just before Christmas 1999 a military coup took place in the Ivory Coast which overthrew the PDCI government. Her husband's family were members of the PDCI, her mother-in-law was a local secretary and she lived with that family. On 26th December 1999, their home was visited by members of the military, who beat them up with clubs and rubber batons. They also made them drink toilet water. The soldiers raped her, and at this point she began to cry. She had never told her husband before the hearing about this for fear of ruining their marriage. The Adjudicator noticed that her husband began to cry and buried his head in his hands. Following on from that rape, she suffered a miscarriage. After the miscarriage, she managed to get disguised with the assistance of her mother to whom she had turned for help after the abduction of her mother-in-law and father-in-law. In disguise, she was able to get away in a car, make her way to a village with her husband where they were given shelter by a pastor and attended the church service. Her husband was himself a pastor. On 9th January 2000, the soldiers burst into the church seeking PDCI members, beating members of the congregation at will but not, thanks to the silence of the congregation, finding the Respondent and her husband. Thereafter, and in order to save individual churches from the possibility of similar treatment, they were moved from church to church, week by week, hiding in church premises where possible. She indicated that she had been hiding in 27 or 28 in the period after that until the couple got out of the Ivory Coast in the July of 2000. They were smuggled out with the aid of church members. She did not know where her husband's parents were or what has happened to them; she thought that they were dead.
4. In allowing the appeal, the Adjudicator stated that in cases like this one looks to corroboration from the objective evidence. There is certainly corroboration in the somewhat out-of-date objective evidence that has been accumulated in the course of this case that the period immediately after the coup d'état and during the military government was a period of lawlessness, violence to those who were or were thought to be members of the opposition, the soldiery being unrestrained by law or common humanity.
5. In seeking corroboration of an account, one also looks to internal consistency. One particular matter of corroboration stood out very clearly in his hearing of this case. He was able to see the husband's reaction to his wife's account of having been raped and thereafter not having told him about that because of the risk of spoiling their marriage. Because of the way in which the court was structured, he had a clear view of the husband as that evidence was given. He had no doubt whatsoever that, when she told him that this was something she had not told her husband before, she was telling the Adjudicator nothing other than the truth. Her husband's reaction was dramatic and totally genuine. He was prepared, therefore, to find the assertions of fact which the Respondent makes proved, not merely on the lower standard of proof which is requisite for asylum claims, but on the balance of probabilities. If he were required to do so, he would say that he was certain beyond reasonable doubt that the Respondent's evidence was true.

6. The Adjudicator then went on to consider the objective evidence. He found that there were reports of continuing sporadic lawlessness and violence, arbitrary arrest and detention, murders, beatings and torture. Nevertheless, the situation at the moment was much more stable than it was when the Respondent and her husband left the Ivory Coast.
7. The Respondent's Counsel had pointed the Adjudicator to paragraph 136 of the UNHCR Handbook. This deals with the situation that applies to statutory refugees whose native country has improved since the day when they were persecuted but who are able "to invoke compelling reasons arising out of the previous persecution for refusing to avail themselves of the protection of the country of nationality" (Article 1C(5) of the 1951 Convention). The Adjudicator stated that the Respondent is, of course, not a statutory refugee but the paragraph goes on "the exception, however, reflects a more general humanitarian principle, which could also be applied to refugees other than statutory refugees". He took the view that what had happened to the Respondent and her husband amounted to "atrocious persecution" which is an exception to the general rule. He therefore had no hesitation in finding that the Respondent was within that exception described in paragraph 136 as "a more general humanitarian principle". He applied that principle and on that basis concluded that the Respondent was now, as she had been, a refugee within the Convention.
8. Although he was not required to by virtue of the date of decision, the Adjudicator commented on the Respondent's human rights appeal by saying that, if he were permitted to, he would have found that by reason of her past experiences it would be a breach of her rights under Article 3 were she to return to Ivory Coast where she had clearly suffered such atrocious treatment. However, he said that he was bound by **Kariharan** which prevents him from applying human rights' consideration to someone who is, as this Respondent is, an illegal entrant. He therefore dismissed the human rights appeal.
9. At the hearing before the Tribunal, Counsel submitted a cross appeal. He submitted that the Adjudicator had no jurisdiction to apply human rights' consideration to the facts of this case and that **Kariharan** was due to be heard by the Court of Appeal on 17th June 2000.
10. We informed Counsel that the decision to refuse the Appellant's asylum in the United Kingdom was taken on 4th September 2000, before the coming into force of the Human Rights Act. Therefore, this was not a matter in which we had jurisdiction and therefore we were not going to entertain the cross appeal.
11. The only appeal before us, therefore, is in relation to the asylum appeal of the Respondent which was allowed by the Adjudicator.
12. Ms Giltrow relied on the grounds of appeal. She submitted that the Adjudicator was flawed in his findings that soldiers actively pursued the Respondent when she was in hiding in the year 2000. The Respondent's evidence at the hearing was that the soldiers were seeking PDCI members and her name was not called out.

13. She further submitted that the Adjudicator did not give reasons why the Respondent would be persecuted on return, notwithstanding the unstable situation in December when the events happened. The Adjudicator failed to have regard to background material pertaining to the situation in Ivory Coast as at the time of the hearing. His finding that the Respondent would be at risk of persecution on return is not backed up by the objective material. At page 6 of the October 2001 CIPU report are various election reports. They included the results of the presidential election held on 22nd October 2000, the results of a by-election held on 14th January 2000 and local election results held on 25th March 2001. According to the by-election results, the PDCI won 96 seats. They won 59 communes as a result of the local election on 25th March 2001. Ms Giltrow submitted that there was no evidence now, even if those events had happened, that they were the actions of soldiery who were out of control and there was no evidence that she was persecuted in any way because of her political opinion. Although the Adjudicator had sympathy for this claim, he has misapplied the principles in Ravichandran and, on the objective evidence, the Respondent cannot show that she will be at risk were she to return to Ivory Coast now.
14. In reply, Counsel submitted that the soldiery who committed the acts of persecution against the Respondent were agents of the state. She referred us to paragraphs 3.13 and 3.14 of the CIPU report in which it was said that General Guei said on 10th July that those soldiers who had participated in the mutiny would be punished. Counsel submitted that this evidence shows that action is only taken against soldiers when they have gone against General Guei. Other background material in the Respondent's evidence, in particular the US State Department report, states that the new Constitution granted immunity to all CNSP members and all participants in the December 1999 coup d'état for acts committed in connection with the coup, which implicitly included all criminal activity. Counsel submitted in the light of this evidence that those who committed the rape against the Respondent can be classified as state agents.
15. Counsel accepted that the Adjudicator made no finding of fact as to whether the visit of the soldiers to the church during the service on 9th January 2000 was to specifically seek out the Respondent. She submitted that it is incumbent on an Adjudicator to make such findings of fact. This is a central issue in this case. However, recorded in the Determination at paragraph 13 is the Respondent's evidence that soldiers had gone to church looking for her and her husband specifically but the Adjudicator failed to make a finding on this. She would therefore ask that we remit the appeal for this reason so that the Respondent's appeal can be heard with her husband's appeal on 26th June 2002.
16. The Tribunal agrees that the Adjudicator failed to make a finding of fact on an issue central to the claim. The Respondent claimed that they had fled from the village where they had been given shelter by a pastor because on 9th January 2000 the soldiers burst into the church seeking PDCI members, beating members of the congregation at will but not, thanks to the silence of the congregation, finding the Appellant and her husband. Although this is an issue central to their claim, as it was on the basis of this that they left Ivory Coast, we do not feel it appropriate to remit the appeal simply so that a finding can be made on this matter. Events in Ivory Coast

have moved on since the coup in December 1999, of which this central issue was a part. We therefore propose to deal with the matter ourselves.

17. The Adjudicator made no clear finding as to whether the soldiers who burst into the church on 9th January 2000 had done so specifically to seek out the Respondent and her husband. We have looked at the Respondent's statement wherein she says that owing to the influence of her mother-in-law, she joined the PDCI and had an active role in the party. She and her husband attended the meetings and distributed leaflets. Further on in her statement, she said that when the soldiers entered the church on 9th January 2000 they said that they knew that the pastor of the church was harbouring someone. They threatened to smash up the church if their identities were not revealed. Nobody had informed them of their identity. In the light of the evidence, before us, we are prepared to accept that the soldiers had gone into the church on 9th January 2000 specifically to look for the Respondent and her husband because of their political activities for the PDCI; that, in the light of her previous experience of being raped by the soldiers, she had a well-founded fear that they would do the same to her, had she been found that day. Therefore, on the evidence before us, we accept that when she fled Ivory Coast, about July 2000, she had a well-founded fear of persecution by reason of her political opinion.
18. It is obvious to us that the Adjudicator was so moved by sympathy for the Respondent and by her husband's reaction to her evidence of rape that he invoked the proviso in Article 1C(5) of the 1951 Convention to allow the appeal. The Adjudicator erred in doing so.
19. Article 1C of the 1951 Convention provides that:
 

This convention shall cease to apply to any person falling under the terms of Section A if :

(5) He can no longer, because the circumstances in connection with which he been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under Section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the persecution of the country of nationality;
20. It is clear that Article 1C(5) can only be invoked if that person has been recognised as a refugee. This Respondent has never at any time been recognised as a refugee. Therefore, the Adjudicator's reliance on Article 1C(5) and its proviso was totally misconceived. The correct approach was for the Adjudicator to look at the situation in the Ivory Coast as at the date of hearing and decide whether there was a reasonable degree of likelihood that the rape of the Appellant, however atrocious, it was, would occur again on her return and, if so, whether the authorities would be able and willing to offer her adequate protection.
21. The soldiers, who perpetrated the act of rape against her, are no longer in power. The rape occurred at a time of lawlessness immediately following the coup. We do

not accept the argument that they are agents of persecution simply because they have been granted immunity from their act of criminality. We do not believe that in the current prevailing circumstances, the respondent is likely to be raped again by soldiers but if in the unlikely event that she is, we find that on the objective material before us, the authorities will be willing and able to offer her adequate protection to the Horvath test.

22. However, the Respondent's fear of persecution is not well founded now as events in Ivory Coast have moved on since the coup in December 1996. It is clear from the CIPU report of October 2001 that Ivory Coast is now a multi-party democracy; Presidential, legislative and municipal elections were held in October 2000, December 2000 and March 2001. The PDCI, of which the Appellant was a member, participated in those elections. They won 77 seats in the legislative election held on 10th December 2000 and 19 seats in the by-elections held on 14th January 2000, totalling 96 seats. In the local election held on 25 March 2001, they won 59 communes. In the light of such evidence, the Adjudicator's finding that the Respondent would be at risk on her return is not backed up by the objective material.
  
23. Accordingly, Appellant's the appeal is allowed.

**Miss K Eshun  
Vice President**