

# **Albuja v. Canada (Minister of Citizenship and Immigration)**

Between  
Jorge Ernesto Echeverria Albuja, applicant, and  
The Minister of Citizenship and Immigration, respondent

[2000] F.C.J. No. 1707  
Court File No. IMM-3562-99

**Federal Court of Canada - Trial Division**  
**Montréal, Quebec**  
**Pinard J.**

Heard: August 29, 2000.  
Judgment: October 23, 2000.  
(11 paras.)

*Aliens and immigration — Admission, refugees — Disqualification, crimes against humanity — Personal and knowing participation — What constitutes.*

Application by Albuja for judicial review of a decision of the Convention Refugee Determination Division that he was excluded from consideration as a Convention refugee on grounds that there were serious reasons to consider that he committed crimes against humanity. The main issue was whether the level of his activity with the Coupola in El Salvador was sufficient to constitute personal and knowing participation. The Coupola engaged in reprisals against civilians. Albuja attained the rank of First Sergeant and had been promoted several times. On his own evidence, he had access to confidential information, read and encoded orders from the authorities regarding persons they wished to make disappear. Albuja then sent these orders to the GOE, a group of soldiers under the joint command of the army and police. He was aware of civilian deaths caused by the GOE and army and was aware of the use of torture as a method of interrogation. The evidence supported the inference that he failed to withdraw, even when he had the opportunity and quit only after he was harassed into doing so by his superiors.

**HELD:** Application dismissed. Given Albuja's own testimony regarding his knowledge of the crimes against humanity being perpetrated by the GOE and supported by the Coupola, his position within the Coupola, and his failure to withdraw from the organization, the conclusion that his participation in the Coupola was personal and knowing was reasonable. The panel did not fail to identify the specific crimes against humanity. Factual findings were made, and the conclusion that they constituted crimes against humanity was reasonable.

**Statutes, Regulations and Rules Cited:**

Immigration Act, R.S.C. 1985, c. I-2, s. 2(1).

**Counsel:**

William Sloan, for the applicant.  
Michel Pépin, for the respondent.

---

1 **PINARD J.** (Reasons for Order):— The applicant seeks judicial review of a decision of the Convention Refugee Determination Division of the Immigration and Refugee Board (the Board) dated June 18, 1999, determining him to be a person to whom the Convention does not apply pursuant to subsection F(a) of Article 1 thereof.

2 Subsection 1F(a) of the Convention provides that the Convention shall not apply to any person with respect to whom there are serious reasons for considering that he has committed crimes against humanity. The definition of a Convention refugee in subsection 2(1) of the Immigration Act, R.S.C. 1985, c. I-2, as amended (the Act) excludes any person to whom the Convention does not apply pursuant to subsection 1F(a) thereof.

3 It is well established that mere membership in an organization which commits international offences will not justify a finding that a claimant was an accomplice to the commission of such offences (see *Ramirez v. Canada (M.E.I.)*, [1992] 2 F.C. 306 at 317). The starting point for complicity in a crime against humanity is "personal and knowing participation". In the words of Justice MacGuigan in *Ramirez*, supra, at page 318:

At bottom, complicity rests in such cases, I believe, on the existence of a shared common purpose and the knowledge that all of the parties in question may have of it.

This view was subsequently adopted by another panel of the Federal Court of Appeal in *Bazargan v. M.E.I.* (1996), 205 N.R. 282, wherein Décaré, J.A. stated, at page 287:

In our view, it goes without saying that "personal and knowing participation" can be direct or indirect and does not require formal membership in the organization that is ultimately engaged in the condemned activities. It is not working within an organization that makes someone an accomplice to the organization's activities, but knowingly contributing to those activities in any way or making them possible, whether from within or from outside the organization. At p. 318 F.C., MacGuigan, J.A., said that "[a]t bottom, complicity rests ... on the existence of a shared common purpose and the knowledge that all of the parties in question may have of it". Those who become involved in an operation that is not theirs, but that they know will probably lead to the commission of an international offence, lay themselves open to the

application of the exclusion clause in the same way as those who play a direct part in the operation.

4 Complicity through association is a factual question that can only be answered on a case-by-case basis (see *Sivakumar v. Canada (M.E.I.)*, [1994] 1 F.C. 433 at 438).

5 Here, the Board found the applicant to be credible. However, on the grounds that he belonged to the Coupola, a group implicated in reprisals against civilians, the Board held that the Convention did not apply by virtue of subsection 1F(a). Although it was not established that the applicant had personally committed crimes against humanity, the evidence demonstrated that he was not merely a member of the Coupola, but that he held the rank of First Sergeant and had been promoted several times. He had access to highly confidential information and read and encoded orders pertaining to individuals that the authorities wished to make disappear. The applicant received this material from "la hiérarchie la plus élevée". He then sent the orders to the GOE, a group of soldiers under the joint command of the army. The applicant explained that the GOE can also be authorized to take orders from the police. According to the applicant, the GOE is trained to act against individuals considered to be subversives.

6 In addition, the applicant testified that he knew of civilian deaths caused by the GOE and the army. He learned of these crimes not only through the media, but also as a result of his position. The applicant testified that he encoded a conversation about two officers who were the victims of sabotage by the army. Later, he transmitted orders to the GOE to make "disappear" two union leaders. When asked by the Board how he reacted to the latter incident, he replied that he spoke to no one of the incident and that, "je fais tout simplement le travail qu'on m'avait commandé de faire". The applicant also testified that he was aware of the use of torture as a method of interrogation and that some of the information that passed through his hands was from interrogation centres.

7 The applicant's evidence is supported by the documentary evidence, which indicates that there have been reports of torture and ill-treatment by members of the Ecuadorean armed forces<sup>1</sup> and refers to the Restrepo case mentioned by the applicant<sup>2</sup>.

8 The evidence also established that the applicant failed to withdraw from the Coupola even though he had opportunity to do so<sup>3</sup>. No evidence was presented to the effect that the applicant would have suffered any risk to himself had he chosen to withdraw from the

---

<sup>1</sup> Tribunal Record at page 473, "Amnesty International: Ecuador" and Tribunal Record at page 479, "Human Rights Watch".

<sup>2</sup> Tribunal Record at page 479, "Human Rights Watch". See applicant's reference at page 577 of the Tribunal Record, transcript.

<sup>3</sup> cf. *Moreno v. Canada*, [1994] 1 F.C. 298 (C.A.), where the applicant, who had been conscripted into the Salvadorean army at age sixteen, was ordered to stand guard outside a cell where a prisoner was being tortured. The facts disclosed that the applicant was a bystander who could not have intervened, who did not share the military's purpose and who deserted as soon as possible. He was found not to be an accomplice to the torture.

Coupola. In fact, the applicant only quit after learning about the planned coup d'état, when his superiors harassed him physically and psychologically into leaving.

9 Given the applicant's own testimony regarding his knowledge of the crimes against humanity committed by the GOE with the support of the Coupola, his position with the Coupola and his failure to withdraw from that organization, it was reasonable for the Board to infer that the applicant's conduct amounted to "personal and knowing participation" and that he shared the organization's purpose in committing these crimes.

10 Moreover, contrary to the applicant's second argument, I do not think that it can be said that the Board failed to identify the specific crimes alleged to have been committed. Unlike the panel in *Sivakumar*, supra, the Board in this case made factual findings about the acts committed by the GOE and supported by the Coupola. The Board also found that these acts constituted crimes against humanity. In my opinion, the Board "set out in its reasons those crimes against humanity for which there are serious reasons to consider that a claimant has committed them" (see *Sivakumar*, supra, at page 449).

11 In light of all of the above, I am not satisfied that the Board committed any reviewable error and this application must be dismissed.

PINARD J.