

JH
Heard at Field House
On 30 August 2002

NO (Journalists) Algeria CG
[2002] UKIAT 04664
CC08051-2002

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.4 October 2002

Before:

Mr J A O'Brien Quinn QC (Chairman)
Mr C Thursby

Between

Nacereddine Ouladtaybe

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant, a citizen of Algeria, appeals against the determination of an Adjudicator (Mr Malcolm Rothwell) dismissing his appeal against the refusal of the Secretary of State to grant his application for asylum.
2. The appellant was represented by Miss P Mansoor, of Counsel, instructed by Ahmed & Co, Solicitors, while Mr I Graham, Home Office Presenting Officer, represented the Secretary of State.
3. Leave to appeal to the Tribunal was granted by the Tribunal (Mr M W Rapinet, Vice President) on 1 July 2002.
4. In granting leave to appeal, the Tribunal stated as follows:

"It is arguable that having accepted that 20 of the applicant's colleagues had been murdered, the Adjudicator erred in rejecting the applicant's claim that he was in danger. Whether such risk still subsists in Algeria now is a matter which the Tribunal may wish to

consider, notwithstanding the consideration given to this aspect by the Adjudicator.”

5. When the appeal opened before the Tribunal, on 30 August 2002, Miss Mansoor put in a number of documents including the chronology of events, among which were the US State Department report, a number of extracts from various publications, relating to the situation facing journalists in Algeria in recent times, and the CIPU report of April 2002, from which she quoted pertinent passages and submitted that, even though the appellant had been a journalist between 1993 and 1999, before he had left Algeria, the situation in Algeria was as serious now as it was then and was even more serious, having regard to the fact that, on 27 June 2001 the Government enacted a series of amendments to the Penal Code that gave the government authority to impose high fines and harsh jail sentences in cases in which reporters “defame, insult or injure” government officials, and, where, although no journalists had been charged under the new law, the Government had brought several defamation cases against journalists during the year under the old provisions of the Penal Code.
6. She drew our attention to an extract from “World News” which had stated that 70 journalists, photographers and associated staff had lost their lives in Algeria since May 1993, that their killers were armed Islamic groups, who had won an election in 1991, but had been forbidden from taking power by the secular military backed regimes and that journalists had often been critical of both sides, with deadly results. She submitted a report of 26 February 2002, entitled “CPJ2002 Protest Letter”, and where a report was made with regard to journalists who had been charged with defaming the army in an article on 11 December, by accusing the military police of financial misconduct and that, a week earlier, prosecutors had attempted to reinstate a 1997 judgment against another journalist by the name of Belhouchet, that resulted from statements he had made to the French media asserting that government officials may have been responsible for the murders of some journalists during Algeria’s brutal war between 1992 and 1995. She submitted that Belhouchet, in November 1997, had received a one year suspended sentence and appealed against that decision and that although the Supreme Court did not allow his appeal, it would appear that the suspension had been taken off the sentence and he had to undergo the imprisonment.
7. She submitted that, as stated in Amnesty International in a report, dated 19 April 2002, although little international attention is paid to the ongoing suffering of the Algerians, the bleak reality is that a human rights crisis continues to blight Algeria with the number of people killed each month by the security forces, State-armed militias and armed combatants of the armed conflict, remains shockingly high and that reports of torture and ill-treatment by the security forces, including that of women and children as young as 15, continue to be numerous and widespread.

8. She submitted that even the CIPU report, itself, stated in August 1999, that President Bouteflika had stated that journalists working for public radio and television should serve the interests of the State and that the state of emergency gave the government broad rights to restrict freedom of speech. She submitted that the documentary evidence indicated that the government not alone persecuted journalists for recently written articles, but persecuted them in respect of articles which had been written in the past.
9. The main thrust of Miss Mansoor's submissions was that the appellant, as a journalist, who had defamed the military in writing the article in a widely circulated daily newspaper in Algeria and who had been visited by unknown persons, and had received telephone calls which caused him to be in fear, sufficiently to make him leave Algeria, in view of the fact that a number of his colleagues had similarly received telephone calls and had been murdered, in all circumstances, and in view of the fact that the government was proceeding against journalists who had written articles some years back, he would face prosecution on that account and that, in those circumstances, the Adjudicator was wrong to have found otherwise and that the appeal should be allowed.
10. We heard Mr Graham, in reply, and his submission was that although the citations from the objective evidence were impressive, nevertheless, one had to look at the subjective evidence where the appellant was concerned. He submitted that, while the appellant had been a journalist between 1993 and 1997, on weekly newspapers in Algeria, he wrote, mainly, on social issues and had written one article in November 1996, criticising the army for importing beer when hospitals were short of supplies and that, in the following month, December, two men had come to his offices when he was out asking to see him, he had been told that they were very aggressive and that he feared who they might be, but, although he claimed to have received numerous telephone calls, from people claiming that they wanted him to help them write articles, they did not identify themselves, there was nothing in his evidence to indicate of whom he was in fear, and that his assumption was that it was the army, but there is no evidence whatsoever of that.
11. He submitted that the Adjudicator had clearly considered all of the evidence and he drew our attention to what he had found, at paragraph 4.10 of his determination, where he stated that although the appellant claimed to have a specific fear as a journalist, nevertheless the Canada Report at page 17 stated that "it is striking to see how openly critical of government the Algerian press can be" and that in the USSD Report, at page 94 of the appellant's bundle, it recorded that "A large number of independent press publications reported regularly on security matters without penalty", and at page 89, in the same report, it reported that journalists can and have faced prosecution for defaming the government but there was no report of any assassination.

12. He submitted that even the documents produced today, by Miss Mansoor, indicated that the only punishment which any journalist would face, or had faced, was a fine or imprisonment for up to one year and a fine which would not amount to persecution, and that it was clear from the reports that journalists had the opportunity of recourse to the Courts for appeal.
13. The gist of Mr Graham's submissions was that the Adjudicator had come to the right decision on the evidence both subjective and objective, and that despite the wealth of extracts from journals which Miss Mansoor had put forward, and taking account of the reason given for the grant of leave to appeal, although twenty of the appellant's colleagues had been murdered, it would not necessarily mean that the appellant was in danger as, in his particular case, he had not established a reason why he should be targeted either by the military or by any terrorist group. He submitted that the appeal should be dismissed.
14. We then heard Miss Mansoor, in reply, and she drew our attention to a number of extracts from her bundle, to the effect that the human rights situation in Algeria remained generally poor and that serious problems persisted, including the excessive use of force, increased restrictions on freedom of expression and failure to account for past disappearances. She submitted that it was stated in the US State Department report for 2001, published on 4 March 2002, that the security forces committed extra-judicial killings, tortured, beat or otherwise abused detainees and arbitrarily arrested and detained or held individuals incommunicado. She submitted that the security forces continued to torture detainees who are suspected of involvement with, or with knowledge of, the armed groups, according to human rights lawyers, and that journalists were convicted in absentia.
15. She submitted that the situation which the appellant would face if he were returned, as a journalist, who, in the past had defamed the military, was such that he would face persecution on return both under the Refugee Convention and under the ECHR.
16. We then reserved our determination, carefully considered all the evidence and the submissions made to us and directed ourselves that the burden of proof lay upon the appellant and that the standard of proof is that laid down by the House of Lords in Sivakumaran and more recent decisions of the Courts and the Tribunal.
17. The basis of the appellant's claim for asylum in this appeal is, briefly, that, as a journalist in Algeria, between 1993 and 1997, when, due to the political situation in Algeria a number of the appellant's journalistic colleagues had been murdered, he had written articles, in the Chorrouk newspaper and, in November 1996, had written a particular article in the same newspaper, under his own name, which criticised the army

for importing beer when hospitals were short of supplies, that, in December 1996, two men came looking for him, that when he later saw them, he assumed they were from the military and that he had then received anonymous telephone calls, all of which scared him, and, having gone to a remote town, where he worked as a journalist for a year, before becoming a teacher and had unsuccessfully tried to obtain a visa to various different European countries, finally obtained a visa to go to France and left Algeria in November 2000, for France from where he went to the United Kingdom and sought asylum.

18. When the appellant appealed against the refusal of his application for asylum in the United Kingdom, the Adjudicator, having heard his evidence, and having considered the objective evidence placed before him, set out his reasons for not believing the appellant's story. At paragraph 4.7 of his determination, the Adjudicator, on the subjective aspect, found as follows:

"Moreover, there is some confusion in his interview about this at C3. He said that in 1999, in addition to the 1996 incident, people came to his work whom he thought could be police or terrorists. Furthermore, he said on the same page that "I was scared to death". Yet when he was challenged about attributing the article to himself in the newspaper despite the prevailing climate of fear for journalists he boldly said that he loved his job, he was not going to stop being a journalist (which he did in 1999) and that "I insisted on putting my name to it even if I was going to die". I do not believe the appellant. That completely contradicts his claim to have been mortally afraid and it makes no sense when it would have been possible to use a pseudonym or even no name at all. He said that in response to this "threat" he changed his work patterns so he could not be found. However, I do not find it credible that if he were a serious target for assassination he could not have been found by whoever wanted him, and that he would have continued to work for over two years."

19. At paragraph 4.8 and paragraph 4.9 of his determination, the Adjudicator, on the objective aspect, found as follows:

"48 His own objective material undermines his story. In the article referred to earlier starting at page 63 of the appellant's bundle, the writer states that as a result of these deaths and death threats "many journalists use pseudonyms". At the end of that article on page 68 of the bundle it states that at that time (August 1998) "there has been an improvement in the security situation of late, no journalist has been killed this year" and that "the majority remain wary". The basis of their fears was apparently fundamentalist Muslim groups. Thus, even before the appellant left Algeria there was a reduction in violence against journalists, he has no evidence of any other instances to suggest there was any basis for a continuing fear (if there ever was) for him specifically, and he continued to work as a journalist. Even in evidence he could not assert that there was any group still interested in

him, saying “they came once to get me. They will get me because I haven’t stopped working as a journalist and I am not going to”. Of course he did stop, which both supports his claim to fear and shows that he can avoid it. At C4 of his interview he was extremely vague about his fears, saying he had “been treated in a hostile way from the police who guarded buildings”, but he could not remember when. He gave no further specifics in his evidence of whom he feared or why.

4.9. As for the objective evidence, it confirms that the worst of the terrorist violence was between 1992 and 1997 (Canada Report page 7). CIPU in Section B (page 18) notes that human rights abuse by security forces continued to decline in 2000. At B13 CIPU states that most terrorist incidents took place in the countryside because the large towns have been made safe, including Algiers, a comment repeated at A6. In the CIPU Bulletin at page 2 it states that “There is no group that is persecuted in Algeria today”; but anyone who challenged the authorities “on a sensitive security issue” could be at risk. Also on that page it is said that failed returned asylum seekers are considered to be safe and to have no fear of repercussions. The Canada Report also confirms at page 9 that no group is persecuted in Algeria today.”

20. The Adjudicator, then, at paragraph 4.12, found that the appellant had not established that he had a well-founded fear of persecution for a Convention Reason and went on to dismiss his appeal.
21. The Adjudicator dealt with the human rights aspect and, relying on the decisions in R v Secretary of State ex-parte Sarbjit Singh, and Ireland v United Kingdom, found that the appellant had not established past or prospective ill treatment such as to constitute a breach of Articles 2, 3, 5, 8 and 10 of the ECHR.
22. In view of the fact that, in granting leave to appeal, the Tribunal had stated that it was arguable that the Adjudicator, having accepted that twenty of the appellant’s colleagues had been murdered, he had erred in rejecting the appellant’s claim that he was in danger, we were addressed at length by Miss Mansoor on the situation of journalists in Algeria, and she laid particular emphasis on what would face the appellant, as a journalist who had criticised the military in the past, if he were returned, now, to Algeria.
23. We have, therefore, paid close attention to the subjective evidence of the appellant’s activities as a journalist, before he left Algeria, and the objective evidence of the situation, at present, in Algeria, where journalists are concerned, and on the human rights’ situation generally.
24. In particular, we note, and in the course of Miss Mansoor’s submissions, we raised the point with her, that the appellant, even though he practised journalism during the period between 1993 and 1997, when the fundamentalist terrorist groups were at their worst, did not express any fear of violence or death from them. Miss Mansoor,

although she based her case on the article by the appellant which was critical of the military, stated that he also had a fear of the fundamentalists, but, we are not satisfied that that is so. As far as the evidence goes, the appellant has, throughout, stated that he did not write articles on terrorist matters, because he was not a specialist in that field, but wrote on matters of social interest. In our considered opinion, while we, as the Adjudicator did, accept that journalist colleagues of the appellant had been murdered, we find that there was no reason for the appellant to fear that he would be murdered; the only fear he has expressed is the fear that two unknown persons, whom he thought might be part of the military, were enquiring about him, and that he had received anonymous telephone calls.

25. In our opinion, if it were members of the military who wished to take action against the appellant on account of the article which he had written in November 1996, it is difficult to see why they should have had to resort to sending two people to speak to the appellant when, at the height of the terrorist disturbances going on at that time, they could have taken much more drastic action against the appellant and, if necessary, have blamed any such action on the terrorist groups. We find that the appellant's story of the two men does not stand up to any scrutiny, and we find it not to be true.
26. In our considered opinion, while we accept that he wrote the article in question, we are not satisfied that it caused him to fear any persecution by anyone, be it the military or even Islamic fundamentalists. We are satisfied that the Adjudicator, for the detailed reasons he set out in his determination, came to the correct conclusion in dismissing the appellant's appeal in paragraph 4.12 of the determination.
27. And, in so concluding, we find that, while 20 of the appellant's journalistic colleagues may have been murdered, they were in a different category to the appellant, and wrote on terrorist activities, while the appellant, on his own evidence, wrote only on social matters, and thus, would not have brought himself to the notice of any terrorist fundamentalist groups, and would have had no reasonable degree of likelihood of being killed by them.
28. On the question of what the appellant would be likely to face on his return to Algeria, we have taken note of the extracts from the various sources cited to us by Miss Mansoor. As we see that evidence, and have considered it in the light of the fact that no action was ever established to have been taken by the military against the appellant before he left Algeria in 1999, when the military could have done so, we find that, even though the new legislation brought into force in Algeria in June 2001, gave the government authority to impose high fines and harsh jail sentences in cases where reporters "defamed, insulted or injured" government officials, the sentence for anyone defaming the President is only one of imprisonment of between three and twelve months, and a fine of between 15,000 dinars and 250

dinars (approximately between £500 and £2,500), and for defamation of a Judge, civil servant or a person responsible for public order (including, most likely, the military) the sentence is imprisonment for between two and 24 months and a fine between 10,000 dinars and 500,000 dinars.

29. Further, it is stated in the US State Department report for 2001, that no journalist had been charged under the new law by the end of 2001, although actions for defamation had been taken against journalists during the year under the old provisions. However, even when action for defamation had been taken it would appear that any sentence passed did not exceed one year, and was usually suspended, as in the case of the managing editor of the French language daily "l'Authentique" on 11 July 2001, who, having failed to appear in Court, although properly notified, was sentenced to a six month suspended sentence and a fine only.
30. In these circumstances, and in view of what is reported in the Human Rights Watch World Report for 2002, namely that, although the amended provisions of the Penal Code threatened press freedom, newspapers continued to criticise President Bouteflika, daily, we are not satisfied that the appellant, who had written only one article critical of the military, in November 1996, and had not suffered in any way as a result, before leaving Algeria in 1999, would face persecution on that account if he were now to return to Algeria, and, even if he were to face any charge, or to be sued for defamation, which we are satisfied that he would not, any sanction or sentence would be so low as not to amount to persecution or inhuman or degrading treatment; and, in any event, he would have recourse to the Courts for redress if he found the sentence or fine to be too harsh.
31. Taking all the evidence into account, and having considered the subjective and the objective aspects, we find that we are not satisfied that the appellant has established that the Adjudicator erred in dismissing his appeal under either Refugee Convention or ECHR grounds. We find that the appellant has not established his case to the appropriate standard, set out earlier in this determination, and we dismiss this appeal.
32. This appeal is, therefore, dismissed.

J A O'Brien Quinn QC
Chairman