



Date: 20230331

Docket: IMM-8711-21

Citation: 2023 FC 455

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 31, 2023

PRESENT: The Honourable Mr. Justice McHaffie

BETWEEN:

**ABDELGHANI IMLOUL
LYNDA BORDJI**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Abdelghani Imloul and his second spouse, Lynda Bordji, fled Algeria in 2019 because they feared the brothers of his first spouse. The Refugee Protection Division [RPD] found that the applicants had not demonstrated that Algerian state protection was inadequate, and rejected

their refugee protection claim. The Refugee Appeal Division [RAD] dismissed the applicants' appeal on November 8, 2021, finding that the RPD had not erred in its assessment of state protection. The applicants are now seeking judicial review of the RAD's decision.

[2] The applicants have not persuaded me that the RAD's decision was unreasonable in light of the record. In particular, I am not satisfied that the RAD ignored the context of the threats and aggression that Mr. Imloul experienced or that it unreasonably favoured certain aspects of the documentary evidence. In particular, the applicants' arguments disregard Mr. Imloul's testimony before the RPD explaining why he did not claim Algerian state protection.

[3] I therefore dismiss this application for judicial review.

II. Issues and standard of review

[4] This application for judicial review raises the following questions about the reasonableness of the RAD's analysis of state protection:

- A. Did the RAD take a "non-contextual" approach by determining that Mr. Imloul's situation was not one of family or domestic violence?
- B. Did the RAD err in considering the documentary evidence and the evidence on the record?
- C. Did the RAD err in its handling of Mr. Imloul's previous personal incidents?

[5] These issues regard the basis for the RAD's decision, so they must be reviewed against a standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25; *Burai v Canada (Citizenship and Immigration)*, 2020 FC 966 at para 17.

[6] A review against reasonableness does not seek perfection on the part of the administrative decision-maker: *Vavilov* at para 91; *Farrier v Canada (Attorney General)*, 2020 FCA 25 at para 13. That said, the court must consider what the applicant presented to the administrative decision-maker, namely the evidence on the record and the parties' submissions, since a reasonable administrative decision-maker must be alert to what is before it: *Vavilov* at paras 125–128; *Lopez Santos v Canada (Citizenship and Immigration)*, 2021 FC 1281 at para 40; *Phuntsok v Canada (Citizenship and Immigration)*, 2020 FC 1110 at para 31.

III. Analysis

A. *The RAD's approach in its state protection analysis was reasonable*

(1) The refugee protection claim

[7] The applicants' refugee protection claim was based on the persecution to which they would be subjected in Algeria from Mr. Imloul's former brothers-in-law. The latter want Mr. Imloul to reconcile with their sister, whom he divorced in 2010 after nearly 16 tumultuous years of marriage. He alleges that he was mistreated during that time. The three children from this marriage remain in Algeria with their mother. In fact, the mother has forbidden Mr. Imloul from seeing his children since the divorce, despite an agreement at the time of the divorce that

allows Mr. Imloul custody of the children every second weekend and despite the attempts of several bailiffs hired by Mr. Imloul to enforce the agreement.

[8] Mr. Imloul's former brothers-in-law attacked him in November 2010. This assault was so severe that he had to go to hospital. In 2013 and again in 2015, the applicants moved, but the former brothers-in-law found them and threatened Mr. Imloul. The applicants left Algeria for Canada in August 2018. During a visit to Algeria in January 2019, the brothers-in-law once again found Mr. Imloul at Ms. Bordji's mother's residence and intimidated him.

[9] The RPD determined that the applicants were generally credible, aside from some behaviour that was inconsistent with their testimony about state protection, a determination that the RAD did not question. The applicants' written account was therefore not challenged.

(2) State protection

[10] The only issue before the RPD and the RAD was state protection. A person who can be protected by their country is not a Convention refugee or a person in need of protection: *Immigration and Refugee Protection Act*, SC 2001, c 27, ss 96–97; *Lakatos v Canada (Citizenship and Immigration)*, 2018 FC 367 at para 18. It is well established that “nations should be presumed capable of protecting their citizens”: *Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at para 43, citing *Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at p 725; *Lakatos* at para 19. To rebut this presumption, applicants must demonstrate that protection was inadequate, either because they sought state protection but it was not forthcoming or because they did not try to obtain it due to a well-founded fear that it would not

be provided: *Mekashishvili v Canada (Citizenship and Immigration)*, 2021 FC 65 at para 32, citing *Pava v Canada (Citizenship and Immigration)*, 2019 FC 1239 at para 37.

[11] In this case, according to Mr. Imloul's testimony before the RPD, he sought Algerian state protection once, after the incident in November 2010. He filed a complaint against the former brothers-in-law with the police, presenting a medical certificate of his hospital visit as supporting evidence. Mr. Imloul only followed up once with the police, which reportedly told him that the documents regarding his complaint had been sent to the courthouse and that Mr. Imloul simply had to wait for the prosecutor to summon him. However, the courthouse in question was burnt down in 2011 during the protests in Algeria. To his knowledge, no further action was taken regarding his complaint after that, and he did not follow up.

[12] Despite the continued threats from his former brothers-in-law, Mr. Imloul did not file any further complaints with the police. Mr. Imloul's testimony before the RPD indicates that he did not file a complaint about the events that followed the first assault because he had no witnesses or, even if he had, they refused to testify. According to him, without witnesses, it was futile to file a complaint because the police would not accept it. Indeed, his 2010 complaint was accompanied by a medical certificate from a medical examiner recognized by the authorities.

(3) The rejection of the refugee protection claim

[13] The RPD and the RAD both found that the applicants had not rebutted the presumption of state protection.

[14] The RAD noted Mr. Imloul's testimony and the documentary evidence in the National Documentation Package for Algeria regarding the country's police force. The RAD rejected the applicants' arguments that the RPD had not analyzed the issue of state protection in the context of family violence where the victim is a man. The RAD found that the applicant's former brothers-in-law's assaults and threats did not occur in a "context of conjugal or domestic violence". It also found that Mr. Imloul's situation was not similar to that of a female victim of domestic violence given that he no longer lived with his former spouse and did not depend on her.

[15] The RAD also found that the documentary evidence, including some new evidence submitted by the applicants, did not demonstrate that protection would be inadequate in the applicants' case. It therefore found that the applicants had not rebutted the presumption of protection with clear and convincing evidence.

(4) The RAD did not err in its approach

[16] Before this Court, the applicants are repeating their argument that the analysis of state protection should have been [TRANSLATION] "contextual", based on the context of family violence. They argue that the RAD's finding that this was not a "context of conjugal or domestic violence" was unreasonable given the context of violence that Mr. Imloul has endured, violence that was perpetrated by his former spouse and her brothers.

[17] I cannot accept this argument, for two reasons. First, in the context of state protection analysis, describing a situation as "domestic violence" or "family violence" is only relevant

insofar as the evidence indicates that Algeria does not adequately protect the victims of such violence. As the RAD noted, the documentary evidence in the National Documentation Package speaks rather of how the police handles domestic violence between spouses or people in a relationship, particularly when this violence is committed against women. Therefore, this evidence is not relevant to the assaults by the former brothers-in-law, even if these can be described as “family violence”. Thus, as the RAD mentioned, the applicants did not present any documentary evidence that state protection would be inadequate because of the nature of the behaviour they are fleeing, regardless of whether or not this behaviour is considered to be “family violence”.

[18] Second, there is no indication that Mr. Imloul’s decision not to file a complaint with the authorities regarding the incidents after 2011 was influenced by the fact that the agents of persecution were his former brothers-in-law and that the assaults therefore took place in a context of “family violence”. In fact, as the RAD pointed out, this particular context was not raised before the RPD. Mr. Imloul instead testified that the lack of witnesses influenced his decision.

[19] I must comment on two other submissions made by the applicants before this Court. First, Mr. Imloul pointed out that his first spouse mistreated him while they were married. However, the applicants’ agents of persecution are the former brothers-in-law and not Mr. Imloul’s former spouse. The sufficiency of state protection must be analyzed in the context of the dangers that the applicants would face. The applicants’ desire for everything to be considered to be [TRANSLATION] “family violence” ignores the reason underlying their refugee protection claim.

In addition, at the hearing before this Court, the applicants argued that Mr. Imloul's sex influenced the availability of state protection in the context of this case. This was never mentioned before either the RAD or the RPD, the applicants did not present Mr. Imloul as a victim because of his sex, and there is no evidence on the record to support this argument.

[20] I therefore find that the applicants have not established that the RAD's approach in its state protection analysis was unreasonable.

B. *The RAD's assessment of the evidence was reasonable*

[21] The applicants criticize the RAD for being selective in its review of the evidence and for not considering some of the evidence. In particular, they refer to the evidence concerning arbitrary detentions, the lack of judicial independence and impartiality, and problems with the police, such as corruption and impunity. Before the RAD, they also presented new evidence regarding events in Algeria post-dating the RPD decision, which was admitted.

[22] I cannot accept this argument. The RAD considered the evidence submitted by the applicants and found that they had not demonstrated that Algerian state protection was insufficient. It noted the problems pointed out by the applicants, but found that "the fact that some individuals in authority may have committed some violations of human rights and that there may be corruption and impunity does not establish that the protection would be inadequate in the appellant's case" [emphasis added]. The RAD reached the same conclusion with respect to the new evidence presented by the applicants.

[23] In my view, the RAD was not selective in its review of the evidence. It explained why the evidence presented by the applicants did not supplant the documentary evidence suggesting that Algerian state protection would be adequate: it found that the evidence did not influence the protection that would be available for acts such as those committed by Mr. Imloul's former brothers-in-law. Given the specific evidence submitted by the applicants, this conclusion was open to the RAD. The RAD discharged its obligations regarding this evidence and drew a reasonable conclusion from it.

[24] The fact that the applicants do not agree with the RAD's findings and would prefer more weight being given to certain items of evidence does not make the RAD's analysis unreasonable and does not give this Court a reason to intervene in the decision: *Vavilov* at para 125; *Singh v Canada (Citizenship and Immigration)*, 2021 FC 336 at para 29.

C. *The RAD's handling of previous personal incidents was reasonable*

[25] The applicants submit that the RAD did not consider their previous personal experiences. According to them, two significant occasions [TRANSLATION] "may have significantly affected [Mr. Imloul's] confidence in the Algerian authorities". They point to the complaint that he filed in 2010 and to his use of bailiffs to gain access to his children. I do not agree that the RAD's decision was unreasonable in this regard. The RAD fully considered the context of the 2010 complaint, and Mr. Imloul never suggested that his decision not to seek state protection was influenced by the outcome of his 2010 complaint or by his experiences with the bailiffs.

[26] As the applicants agreed at the hearing, subjective reluctance to seek state protection does not rebut the presumption of state protection in the absence of a compelling or persuasive explanation: *Ruszo v Canada (Citizenship and Immigration)*, 2013 FC 1004 at para 33; see also *Canada (Citizenship and Immigration) v Pham*, 2022 FC 723 at para 20. That being said, the RAD must still consider this reluctance against the country evidence: *Hindawi v Canada (Citizenship and Immigration)*, 2015 FC 589 at para 31, citing *Aurelien v Canada (Minister of Citizenship and Immigration)*, 2013 FC 707 at para 13; see also *Csoke v Canada (Citizenship and Immigration)*, 2015 FC 1169 at para 18.

[27] Before the RAD, the applicants criticized the RPD's statement that Mr. Imloul [TRANSLATION] "limited himself to not seeking protection", noting that he sought state protection in 2010 and that [TRANSLATION] "no action was taken to protect him". The RAD considered these facts in its decision, noting that the first complaint was not followed up on because of the fire at the courthouse. In addition, Mr. Imloul did not file a complaint following the threats and assaults that occurred afterwards because of a lack of witnesses. Contrary to the applicants' claims, Mr. Imloul never testified that he did not seek state protection after 2011 because of the outcome of his first complaint or that this outcome affected his confidence in the Algerian authorities.

[28] The applicants' situation is therefore very different from the situations in *AB* and *Zatreanu* cited by the applicants: *AB v Canada (Citizenship and Immigration)*, 2018 FC 237; *Zatreanu v Canada (Citizenship and Immigration)*, 2019 FC 332. In these cases, the authorities did nothing after inadequate investigations of the applicants' complaints (*AB* at paras 24–28,

Zatreanu at paras 47–50). The reason why Mr. Imloul’s complaint was not followed up on, the fire at the courthouse, is of another kind and does not suggest a general lack of state protection. In light of the evidence before it in this case, the RAD’s findings were reasonable.

[29] With respect to Mr. Imloul’s previous experience with the bailiffs and his difficulties in having the custody agreement enforced, the applicants correctly state that they raised this issue before the RAD but that the RAD did not address it. However, I do not find that this makes the decision unreasonable in this case. A panel is not expected to respond to every argument or line of possible analysis, so long as it addresses the “key issues or central arguments raised by the parties” (*Vavilov* at para 128). Before the RAD, the applicants limited their argument on this point to the following sentences:

[TRANSLATION]

The appellant also mentioned in his written account that he tried to gain access to his children under the agreement he had reached in the divorce from his ex-wife by using bailiffs. The account reports that this did not work, making this another occasion when the Algerian state failed the appellant.

We submit that these are two significant occasions that may have significantly affected the appellant’s confidence in the Algerian authorities.

[Emphasis added.]

[30] Once again, there was no evidence that Mr. Imloul’s experiences with the bailiffs genuinely affected his confidence in the authorities in any way or that these experiences caused him not to file another complaint after the first time in 2010. In addition, this possibility was not raised before the RPD. In the circumstances, we cannot say that this was a key issue or a central argument for the applicants.

[31] Given the burden on applicants to demonstrate the inadequacy of state protection through clear and convincing evidence, it is not enough to raise unsupported arguments that prior incidents *might have affected* the applicant's confidence in the authorities. This is even truer when an applicant's testimony indicates that the applicant's decision not to call on the authorities was based on completely different reasons. In other words, the manner in which the argument is presented and the absence of supporting evidence show that the failure to mention the argument cannot be sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

IV. Conclusion

[32] The applicants have not satisfied me that the RAD's decision was unreasonable. Ultimately, the RAD reasonably considered their situation with respect to the issue of state protection. It considered both the documentary evidence objectively describing the sufficiency of Algerian state protection and Mr. Imloul's testimony revealing his subjective opinion about the sufficiency of Algerian state protection. In this case, the RAD did not make a reviewable error in determining that the presumption of state protection was not rebutted.

[33] The application for judicial review is therefore dismissed. Neither party has proposed a question to certify, and in my view, no such question arises in this case.

JUDGMENT in IMM-8711-21

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.

“Nicholas McHaffie”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

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