

Federal Court



Cour fédérale

**Date: 20231201**

**Docket: IMM-2830-23**

**Citation: 2023 FC 1619**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, December 1, 2023**

**PRESENT: Madam Justice Azmudeh**

**BETWEEN:**

**FETAH SALHI**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act* [IRPA], the applicant, Fetah Salhi [applicant], is seeking judicial review of the dismissal of his refugee appeal by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB]. The judicial review is dismissed for the following reasons.

I. Overview

[2] The applicant is an Algerian citizen. He had a romantic and sexual relationship with a girl called Yasmine, which angered his girlfriend's family, in particular her father and brother.

[3] When his girlfriend's family discovered their relationship, her father beat her. His brother, whom the applicant believes to be a member of organized crime, also became angry, confronted the applicant and beat him. He subsequently called him and threatened to kill him. The brother then found his address and searched the neighbourhood for him. The threats continued, even after the applicant moved in with his grandmother in Algiers. Lastly, one night, the brother found him and beat him until he lost consciousness.

[4] After this, the applicant decided to leave the country and ultimately arrived in Canada, where he filed a claim for refugee protection. The applicant stated that he continued to fear his girlfriend's family, in particular her brother. He never sought assistance from the police or any other authority in Algeria, nor had he filed a complaint following the assaults suffered at the hands of his girlfriend's brother.

[5] The Refugee Protection Division [RPD] rejected the applicant's claim for refugee protection, concluding that he had not discharged the burden of proving Algeria's inability to protect him. On February 15, 2023, the RAD confirmed the RPD's decision. That decision is the subject of the present judicial review.

## II. Standard of Review

[6] The only issue before the Court is whether the RAD's decision was reasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [Vavilov]).

## III. Analysis

### A. *Legal framework*

[7] The Supreme Court of Canada analyzed the issue of state protection in depth in *Ward (Canada (Attorney General) v Ward*, [1993] 2 SCR 689, 103 DLR (4th) 1, 20 Imm LR (2d) 85 [Ward]). The Supreme Court has established that, in the absence of a complete collapse of the state apparatus, there is a presumption that states are willing and able to protect their citizens. This presumption can be rebutted by “clear and convincing” evidence of the state’s inability to provide protection (*Ward*, at paras 724–26). Subsequent interpretation of this case by the courts has provided additional context. For example, in a recent decision, *Djabour v Canada (Citizenship and Immigration)*, 2023 FC 1445, Madam Justice Rochester wrote the following:

[7] The test to rebut the presumption of state protection is well established. A refugee claimant seeking to rebut the presumption of state protection must adduce relevant, reliable and convincing evidence that satisfies the decision maker on a balance of probabilities that the state protection is inadequate (*Flores Carrillo v Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94 at para 30; *Nugzarishvili v Canada (Citizenship and Immigration)*, 2020 FC 459 at para 32 [Nugzarishvili]). In other words, a refugee claimant seeking protection must demonstrate that they have either exhausted all objectively reasonable avenues to obtain state protection or that it would have been objectively unreasonable for them to have done so (*Hinzman v Canada (Citizenship and Immigration)*, 2007 FCA 171 at paras 46, 57; *Arango v Canada*

*(Citizenship and Immigration)*, 2021 FC 1016 at para 14;  
*Nugzarishvili* at para 34).

[8] In the context of the Convention refugee definition, claimants must be unable or, by reason of their fear of persecution, unwilling to avail themselves of the protection of the country of nationality (citizenship). The issue of state protection goes to the objective portion of the test of fear of persecution, and it is not enough to simply assert a subjective belief that such protection is not available.

[9] In *Canada (Minister of Citizenship and Immigration) v Olah*, 2002 FCT 595, the Board noted that the relevant evidence to determine the issue of state protection includes the documentary evidence and the personal circumstances of the claimant. However, the claimant's own subjective feelings on state protection are not a relevant factor. See also *Judge v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1089, where the Court confirmed that the test for determining whether state protection is reasonably available is objective.

[10] The responsibility for providing international protection only becomes engaged when national or state protection is unavailable to the claimant (*Ward*, at para 709).

B. *Issue: Was the RAD's decision reasonable?*

[11] It is not disputed that the applicant refused to seek assistance from the authorities in Algeria because of various fears. This was due to subjective factors, such as not believing in the police's willingness or ability to help. The applicant has not supported this belief with evidence.

[12] After reviewing the RPD's file, the RAD agreed with the RPD that state protection was the determinative issue in this case and that the applicant had failed to rebut the presumption that the state would be able to provide him with appropriate protection and that he was justified in failing to seek state protection. In assessing the adequacy of state protection in Algeria, the RAD focused on objective documentary evidence and gave no weight to the applicant's unsupported assertions. I find this decision to be reasonable and supported by case law (*Imloul v Canada (Citizenship and Immigration)*, 2023 FC 455 para 26). The RAD made the following comments about its assessment:

[12] The appellant testified that he did not report his agent of risk to the authorities, either after the threats of March 2019 or when he was beaten outside a pizzeria in downtown Algiers in September 2019. When asked to explain why he did not file a complaint, he stated that it was because the police in Algeria do not intervene in domestic matters and that the police would not have done anything to help him. He feared that the police would have placed the blame on him, because he had a relationship outside marriage. He also feared being targeted by his agent of risk if he filed a complaint. He alleges that his girlfriend warned him that her brother was engaged in drug trafficking in the neighbourhood and that he feared him for this reason. He asserts that his agent of risk may have contacts with the police.

[13] The RPD conducted an analysis of the objective evidence, which demonstrates that the Algerian police may be considered effective. The evidence shows that the murders that have been committed have been addressed. The evidence does not show statistics regarding honour crimes, but these are extremely rare and infrequent in urban areas. They generally occur in rural areas. In the last few years, the Algerian police have deployed significant resources to ensure the safety of citizens, resulting in a 4% reduction in non-political crimes in 2016, including assault and voluntary manslaughter. As the RPD stated: [translation] "It appears that the government has taken reasonable measures to establish and run an effective legal system for detecting, prosecuting and punishing acts that constitute persecution and that this system is generally accessible to Algerian citizens." It concluded that the Algerian state has the ability and the will to implement effective measures to protect its citizens, ensuring adequate protection.

...

[15] After analyzing the documents cited by the RPD and the appellant, I am of the opinion that honour crimes are rare in Algeria. They occur mainly in rural areas, [translation] “where the honour of women is governed by a stricter code of conduct. In urban areas, where education levels and socio economic development are higher, honour crimes are infrequent” [emphasis added]. I am of the opinion that the appellant’s arguments are not supported by documentation that is as categorical as he asserts. It is true that the police may be reluctant to interfere in people’s private lives. However, the documentation shows that the victims of honour crimes are generally women. The documentation presented by the appellant before the RPD relates events where crimes committed against men occurred when they were caught in the act. It also shows that the perpetrators of these crimes were either arrested and detained or received prison sentences.

[13] In the absence of any attempt to seek state protection, and the assessment of the country’s situation, the RAD concluded that the applicant had not demonstrated, by clear and convincing evidence, that his country, Algeria, was unable to protect him. This was a reasonable conclusion and the RAD clearly established the chain of its reasoning.

[14] The applicant argued that his reasons for not seeking state protection were based on his belief that the police would not assist him in domestic disputes characterized as honour killings, and that the brother’s links to organized crime would make state protection unlikely. He did not support his assertions with sufficiently reliable evidence.

[15] To persuade me that the RAD’s conclusion was unreasonable, the applicant claimed at the judicial review hearing that there was an internal contradiction in the RAD’s reasoning. On the one hand, the member agreed that the applicant was credible, but on the other hand, he did not extend the same finding of credibility to his belief that the police were unable or unwilling to

protect him. I see no contradiction between acknowledging the credibility of the facts and disagreeing with the applicant's subjective deductions or beliefs. The facts are lived experience and have been accepted. The issue as to why the police would not have protected him, when the applicant has presented no evidence to support this, is pure speculation.

[16] Although they may be sincere, the applicant's perceptions and fears related to the inaction of the state are not supported by objective evidence.

[17] The applicant has not adduced any evidence other than newspaper articles stating that perpetrators of honour killings of men have been arrested, detained or sentenced to prison terms.

[18] In addition, as the applicant knew the identity of his assailant, it was possible for him to turn to the authorities. The fact that his assailant had possible links with organized crime made no difference, as there was no reliable evidence before the RAD of his ability to interfere with state protection.

[19] I further note that the RAD considered all of the applicant's arguments and assessed them in the context of the objective documentary evidence available to it:

[20] I disagree with the appellant's arguments. The burden is on him to rebut the presumption of state protection. The evidence that he provided shows that women who bear children out of wedlock face discrimination, based on women's premarital chastity. As noted by the RPD, the news articles produced by the appellant demonstrate that perpetrators of honour crimes against men have been arrested, detained or even sentenced to prison terms. I added that the articles are about men who were caught in the act and perpetrators who had an immediate and spontaneous reaction,

which is not the case for the appellant. The fact that the appellant is able to identify his agent of risk is not insignificant. Filing a complaint about death threats from a drug trafficker is no small matter. Fearing that the police will not assist him, in these circumstances, is not reasonable. No evidence was submitted by the appellant other than social condemnation of women who have had relations outside marriage. His argument that relations outside marriage are prohibited in Algeria and, consequently, subject to state penalties, was not provided. I agree with the RPD that the fears raised by the appellant for not having at least attempted to seek state protection are founded on speculative subjective fears. I would add that the appellant's perception may be sincere, even though satisfactory evidence for his arguments cannot be established on a balance of probabilities. The RPD's conclusion is correct.

[20] Moreover, it is not for the Court to re-evaluate the evidence. The applicant's mere disagreement with respect to the assessment of the evidence and its application to the objective test of state protection are not sufficient (*Ouedraogo v Minister of Public Safety and Emergency Preparedness*, 2021 FC 310, at paras 34-35).

[21] For all these reasons, I find that the RAD's decision is internally consistent and based on a thorough assessment of the relevant factual and legal constraints. It possesses all the criteria of justification, transparency and intelligibility and is therefore reasonable.

#### IV. Conclusions

[22] The RAD's decision was reasonable and the judicial review is dismissed.

[23] None of the parties has proposed a question for certification and I agree that none arises in this case.



**JUDGMENT in IMM-2830-23**

**THIS COURT'S JUDGMENT is as follows:**

1. The judicial review is dismissed.
2. There is no certified question.

“Negar Azmudeh”

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Judge

Certified true translation  
Sebastian Desbarats

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2830-23

**STYLE OF CAUSE:** FETAH SALHI v THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

**PLACE OF HEARING:** MONTREAL, QUEBEC

**DATE OF HEARING:** NOVEMBRRER 30, 2023

**JUDGMENT AND REASONS:** AZMUDEH J.

**DATED:** DECEMBER 1, 2023

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