Federal Court  Cour fédérale

Date: 20180706

Docket: IMM-5190-17

Citation: 2018 FC 684

Vancouver, British Columbia, July 6, 2018

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

CETIN GURBUZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Immigration Division [ID] of the Immigration and Refugee Board, dated November 10, 2017 [the Decision], in which the ID found the Applicant inadmissible to Canada based on serious criminality, pursuant to s 36(1)(b) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], and issued a deportation order against him.

[2] As explained in greater detail below, this application is dismissed, because the ID was under no obligation to consider Mr. Gurbuz's arguments that flaws in the Turkish legal system led to the conviction upon which the ID's finding of serious criminality was based.

II. **Background**

[3] The Applicant, Cetin Gurbuz, is a 44-year-old man from Turkey. He was born in a Kurdish village in the province of Agri. Mr. Gurbuz has filed a claim for refugee protection, citing fear of persecution by Turkish nationalists and the Turkish military and police, because he is Kurdish and has pro-Kurdish and leftist views. Mr. Gurbuz has five siblings. Four of his siblings reside in Turkey but one, his brother Halit, now lives in Canada after making a successful refugee claim here. Mr. Gurbez's refugee claim has not proceeded because of the Decision by the ID that he is inadmissible based on serious criminality.

[4] In February 2004, Mr. Gurbuz and Halit were arrested with 126 others and were accused of being part of a Kurdish criminal gang. The allegations in the ensuing prosecution included kidnapping of a Turkish man named Mustafa Kanliyer. As described in an affidavit Mr. Gurbuz has filed in this judicial review application, Mr. Gurbuz, Halit, and other Kurds were convicted in 2013 by a Turkish court described as the 8th Heavy Criminal Court of Izmir. Following an appeal, Halit was acquitted but Mr. Gurbuz was not. According to the Decision, the appeal court found Mr. Gurbuz guilty of deprivation of personal liberty in relation to Mr. Kanliyer, contrary to article 109(2) of the Turkish Criminal Code.

[5] Mr. Gurbuz states in his affidavit that his case was appealed further to the Supreme Court and that his lawyer in Turkey explained to his family that the Supreme Court made many changes, including overturning the conviction against him and ruling that the charges against him were to be heard by a new court. He further states that this lawyer said he would get a copy of the decision and send it to him but that this has not yet been done. The Decision reflects that Mr. Gurbuz made similar statements to the ID at the admissibility hearing, that the ID advised him that proof of this decision would end the matter of his admissibility, and that he indicated he would get the decision for the ID. However, the Decision indicates that four months passed and Mr. Gurbuz did not submit the Supreme Court decision.

[6] Mr. Gurbuz also provided evidence to the ID setting out statements by Mr. Kanliyer that neither Mr. Gurbuz nor Halit was involved in his kidnapping.

III. **Immigration Division Decision**

[7] In the Decision that is the subject of this judicial review application, the ID held that Mr. Gurbuz is inadmissible to Canada pursuant to paragraph 36(1)(b) of IRPA, because there were reasonable grounds to believe that he was convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least ten years.

[8] The ID noted Mr. Gurbuz's submission that his conviction should not be given any weight, arguing that the prosecution against him was politically motivated and amounted to persecution because of his Kurdish ethnicity. The ID stated that it would examine Mr. Gurbuz's

individual circumstances to determine if he was indeed the subject of persecution disguised as criminal prosecution. However, it also noted the decision of the Federal Court of Appeal in *Li v Canada (Minister of Citizenship and Immigration)*, [1997] 1 FC 235 (FCA) [*Li*], to the effect that a criminal inadmissibility hearing does not contemplate an examination of the validity of the foreign conviction. The ID expressed its view that the circumstances, where it would be appropriate to find that a criminal justice system is so corrupt and so untrustworthy that it impugns a criminal conviction from that jurisdiction, would be very limited and that the evidence required to make such a finding must be resoundingly clear.

[9] The ID noted a letter from Mr. Gurbuz's lawyer in Turkey, stating that a decision in his case had been rendered by the Supreme Court, and Mr. Gurbuz's testimony that his conviction had been overturned. However, as noted above, the ID observed that Mr. Gurbuz had submitted no evidence of this Supreme Court decision, despite having had four months in which to do so. It therefore gave no weight to the alleged Supreme Court decision.

[10] Based on the country condition documentation, the ID noted that the independence of the judiciary in Turkey is a concern and that politically motivated prosecutions occur. However, it concluded that the evidence did not show that Kurds are universally persecuted and, relying on the British Home Office 2016 report, concluded that each case must be assessed on its own merits. While the ID described the Turkish judicial system as flawed and noted that there is discrimination against Kurds, it did not consider the evidence to be sufficient in this case to establish that Mr. Gurbuz's conviction was an act of ethnic persecution.

[11] In reaching this conclusion, the ID noted that the foreign conviction being considered was that of the appeal court, not the trial court, and referred to testimony by Halit agreeing that the appeal court in Turkey did not act with bias against the Kurds. The ID did acknowledge that there had been evidence before the appeal court from Mr. Kanliyer stating that Mr. Gurbuz was innocent. However, the ID held that it was not in a position to re-weigh the evidence and that, in any event, it could not have done so without all the evidence that had been before the Turkish appeal court.

[12] Having accepted that Mr. Gurbuz was convicted of deprivation of personal liberty contrary to article 109(2) of the Turkish Criminal Code, the ID proceeded to consider whether this conviction was the equivalent of a criminal offence in Canada that is punishable by a maximum term of imprisonment of at least ten years. After analysing the constituent parts of the Turkish offence, the ID found that it was equivalent to forcible confinement under s 279(2) of the Canadian Criminal Code. Forcible confinement is punishable by a maximum term of ten years imprisonment. Consequently, the ID found Mr. Gurbuz inadmissible to Canada based on serious criminality and issued a deportation order against him.

IV. **Issues and Standard of Review**

[13] The Applicant articulates the following issues for the Court's consideration:

A. Did the ID err in the application of the equivalency analysis?

B. Did the ID err in accepting the conviction of the Applicant on the basis that, by the time the proceedings were before the Turkish appeal court, he was treated more fairly?

C. Did the ID err in failing to consider a central issue before it on whether the Applicant's conviction in the Turkish court was politically motivated?

[14] The parties agree, and I concur, that the standard of review applicable to the issues raised by the Applicant is reasonableness.

V. **Analysis**

[15] Although Mr. Gurbuz articulates three issues for the Court's consideration, these issues all relate to his argument that the ID was obliged to consider his submission that his Turkish conviction resulted from a politically motivated prosecution and/or lack of independence on the part of the judiciary and that the ID's analysis of this submission was unreasonable. He argues that the ID has the jurisdiction to assess whether the conviction was genuine. Mr. Gurbuz notes that the ID found that judicial independence is a concern in Turkey, that politically motivated prosecutions occur, and that the Turkish judicial system is flawed. Particularly against the backdrop of those findings, Mr. Gurbuz submits that the ID was obliged to examine his evidence that the charges against him and his brother were not legitimate, including the evidence from Mr. Kanliyer that they had not been involved in his kidnapping. He argues that the Decision is unreasonable because of the ID's failure to conduct this analysis.

[16] Mr. Gurbuz also submits that the ID unreasonably relied on speculation that the process before the Turkish appeal court was fairer than that of the trial court and argues that, even if it were to be accepted that the appeal process was fairer, the ID failed to explain how fairness on appeal can address both a discriminatory exercise of prosecutorial discretion and unfair treatment by the lower court. He relies on the decision of this Court in *Walcott v Canada (Citizenship and Immigration)*, 2011 FC 415 at paras 37-38, to the effect that procedural safeguards within a hearing process do not necessarily protect against the risk of discriminatory prosecution decisions.

[17] The Respondent takes the position that the ID does not have the jurisdiction to consider whether a foreign conviction resulted from a politically motivated prosecution or flaws in the judicial process. The Respondent submits that the jurisprudence relied upon by Mr. Gurbuz, in support of his position that the ID does have such a role, all relates to exclusion decisions made by the Refugee Protection Division [RPD] under s 98 of IRPA and Article 1F of the Refugee Convention. The Respondent argues that, unlike the RPD's exclusion analysis, the analysis the ID is required to conduct, in considering inadmissibility for serious criminality under s 36(1)(b), is restricted to considering the equivalency of the offence for which the foreign conviction was entered and the Canadian offence with which it is being compared. In the Respondent's submission, this equivalency analysis does not contemplate an examination of the validity of the foreign conviction and even the ID's limited consideration of the fairness of the Turkish judicial process in the present case represents an analysis that exceeds the ID's role.

[18] Mr. Gurbuz accepts that the applicable jurisprudence contemplates different analyses in considering exclusion and inadmissibility. However, he maintains that the equivalency analysis which the ID must conduct includes an assessment of the elements of the offence, as well as applicable defences. He submits that whether proceedings are based on a flawed or unfair judicial proceeding represents an inherent part of this assessment.

[19] It is common ground that, in considering whether an applicant for refugee protection is excluded under s 98 of IRPA and Article 1F(b) of the Refugee Convention, based on there being serious reasons for considering that the applicant has committed a serious non-political crime outside the country of refuge prior to admission to that country, the RPD has jurisdiction to consider allegations of corruption or ethnic persecution in the foreign legal system and to consider whether a foreign conviction is genuine (see, e.g. *Hernandez Hernandez v Canada (Citizenship and Immigration)*, 2010 FC 1323 [*Hernandez*] at paras 36-40; *Altun v Canada (Citizenship and Immigration)*, 2012 FC 1034 [*Altun*] at para 5; *Canada (Citizenship and Immigration) v Toktok,* 2013 FC 1150 [*Toktok*], at paras 9-10).

[20] However, I agree with the Respondent that the jurisprudence confirming this jurisdiction on the part of the RPD in conducting an exclusion analysis has no application to the ID's consideration of inadmissibility for reasons of serious criminality under s 36(1)(b) of IRPA. As explained by the Federal Court of Appeal in *Li* at pages 17-18, albeit in the context of predecessor legislation, the statutory requirement for an analysis of the equivalency of the foreign and Canadian offences, underlying a possible inadmissibility determination, does not contemplate an examination of the validity of the foreign conviction. Similarly, at pages 13-14 of

Li, the Federal Court of Appeal explained that what is being examined is the comparability of offences, not the comparability of possible convictions in the two countries.

[21] *Li* is frequently cited for these principles and followed by this Court (see, e.g. *Lu v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1476 at paras 14-16; *Svecz v Canada (Minister of Public Safety and Emergency Preparedness)*, 2016 FC 3 at paras 21 and 39). Also frequently cited is the decision of the Federal Court of Appeal in *Hill v Canada (Employment and Immigration)* (1987), 73 NR 315 at 320, which explained as follows how the equivalency analysis is to be conducted:

> … first, by a comparison of the precise wording in each statute both through documents and, if available, through the evidence of an expert or experts in the foreign law and determining therefrom the essential ingredients of the respective offences. Two, by examining the evidence adduced before the adjudicator, both oral and documentary, to ascertain whether or not that evidence was sufficient to establish that the essential ingredients of the offence in Canada had been proven in the foreign proceedings, whether precisely described in the initiating documents or in the statutory provisions in the same words or not. Third, by a combination of one and two.

[22] In *Brannson v Minister of Employment and Immigration*, [1981] 2 FC 141 [*Brannson*], in concurring reasons at para 8, Justice Urie of the Federal Court of Appeal identified that it is neither possible nor desirable to lay down in general terms requirements applicable to the equivalency analysis in every case, other than to say that the validity or the merits of the conviction is not an issue. Justice Urie stated that the adjudicator in that case had correctly refused to consider representations in relation to the validity or merits of the foreign conviction.

[23] The Respondent refers to recent decisions of this Court which highlight the different analyses applied under s 98 exclusion decisions and s 36(1)(b) inadmissibility decisions. In *Halilaj v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 1062 [*Halilaj*], this Court dismissed an application for judicial review of a s 36(1)(b) decision, finding the applicant inadmissible based on a conviction in Kosovo for attempted murder, where the applicant's arguments included the position that the Kosovo court system did not meet international standards of due process, especially in cases of inter-ethnicity. In that case, the ID followed *Li* but, out of an "abundance of caution", also conducted an analysis as to whether procedural fairness issues had impacted the conviction in Kosovo, concluding that there were no such issues. Justice McVeigh held that *Li* was the governing law and rejected the applicant's argument that there was an obligation on the part of the ID to consider the procedural fairness of the foreign process.

[24] Similarly, in *Mansouri v Canada (Citizenship and Immigration)*, 2018 FC 144 [*Mansouri*], Justice Diner considered an inadmissibility decision based on a South Korean conviction for inflicting bodily injury. The applicant had previously made a successful refugee claim, in which the Minister intervened on the issue of whether the conviction excluded the applicant from refugee protection under Article 1F(b) of the Refugee Convention. The applicant had adduced evidence that he was denied due process by the South Korean criminal justice system, and both the Minister and the RPD ultimately agreed. Nevertheless, the South Korean conviction surfaced again when the applicant applied for permanent residence status in Canada, and the officer considering his application found that his conviction rendered him inadmissible under s 36(1)(b).

[25] Notwithstanding the determinations that were made in the course of the applicant's refugee claim, Justice Diner relied on *Li* in rejecting the applicant's argument that the officer erred in declining to examine the validity of his conviction in South Korea. *Mansouri* demonstrates the differences in what is to be examined in an exclusion analysis and in an inadmissibility analysis. The former allows for consideration of arguments such as corruption or bias underlying the foreign conviction, but the latter does not.

[26] In support of his arguments, Mr. Gurbuz relied in particular on another recent decision of Justice Diner, *Liberal v Canada (Citizenship and Immigration)*, 2017 FC 173 [*Liberal*], at paragraphs 30 to 32, including a quotation from *Moscicki v Canada (Citizenship and Immigration)*, 2015 FC 740 [*Moscicki*] at para 28, cited therein:

> [30] Moreover, as McVeigh J. clearly explained in *Moscicki v. Canada (Citizenship and Immigration)*, 2015 FC 740 at para 28:
>
> > The key point is that it is not necessary for the Board to determine whether there was sufficient evidence for an actual conviction in Canada. It is whether there are reasonable grounds to believe that the Applicant would be convicted if the same act were committed in Canada. Consequently, the equivalence is between the provisions and not the comparability of possible convictions. Furthermore, the equivalence analysis allows for different statutory wording (*Brannson*, above).
>
> [31] In paragraph 27 of his reasons reproduced above, the member found that the main constituent elements were very similar. He therefore concluded that equivalency had apparently been established by applying the first test in *Hill*. This finding is unreasonable for two reasons. First, the member cited the 2015 Act without analyzing that which was in force at the time of the criminal conviction in Florida. Second, the member had to explain how the main constituent elements were similar.
>
> [32] A mere reference to the relevant provisions, followed by a brief statement regarding their equivalency, is not a reasonable

> analysis. To support this finding, the Court reiterates the comments of Gascon J., who, in *Nshogoza* at para 27, clearly summarized the law in that area:
>
> > The Court must further look at the similarity of definition of the two offences being compared and the criteria involved for establishing the offences (*Li v Canada (Minister of Citizenship and Immigration)*, [1996] FCJ No 1060 (FCA) [Li] at para 18). As explained by Mr. Justice Strayer, "[a] comparison of the "essential elements" of the respective offences requires a comparison of the definitions of those offences including defences particular to those offences or those classes of offences" (*Li* at para 19). In *Brannson v Canada (Minister of Employment and Immigration)*, [1981] 2 FC 141 (FCA) at para 38, the Federal Court of Appeal further stated that the essential elements of the relevant offences must be compared, no matter what are the names given to the offences or the words used in defining them.

[27] Mr. Gurbuz submits that these passages confirm that the equivalency analysis which the ID must perform is more than a mechanical exercise and must take into account the sorts of arguments that he was advancing about flaws in the Turkish judicial system. In my view, these passages identify the necessity for an analysis of the equivalency of the foreign and Canadian offences and that an unsupported conclusion as to equivalency is insufficient. However, I do not read these authorities as supporting the proposition that a s 36(1)(b) analysis contemplates consideration of the validity of the foreign conviction, particularly given *Liberal*'s express reliance on *Li*. While I note the reference in *Moscicki* to determination whether there are reasonable grounds to believe that an applicant would be convicted if the same act were committed in Canada, I do not interpret this as a departure from the principle that the s 36(1)(b) analysis considers the equivalency of the foreign and Canadian offenses, not the likelihood of conviction in Canada. Indeed, the final sentence in the quotation from *Moscicki* emphasizes that

the focus is upon the equivalence of the statutory provisions, not comparing the possibility of conviction.

[28] In my view it is clear from the applicable jurisprudence, including appellate decisions that are binding on this Court, that it is not the role of the ID to consider the validity of the foreign conviction. I also consider this conclusion, and the resulting difference between the Article 1F(b) exclusion analysis and the s 36(1)(b) inadmissibility analysis, to be consistent with the wording of those provisions:

36 (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for	**36 (1)** Emportent interdiction de territoire pour grande criminalité les faits suivants :
[…]	[…]
(b) having been convicted of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years; or	**b)** être déclaré coupable, à l'extérieur du Canada, d'une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans;
1F The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:	**1F** Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :
[…]	[…]
(b) he has committed a serious non-political	**b)** Qu'elles ont commis un crime grave de droit

crime outside the country of refuge prior to his admission to that country as a refugee;	commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;

[29] The language of Article 1F(b) requires consideration whether the applicant for refugee status has committed a crime, while the language of s 36(1)(b) requires consideration whether a person has been convicted of crime. As such, Article 1F(b) affords scope for consideration of arguments surrounding politically motivated prosecution or other flaws in a foreign legal system, as the fact of a conviction does not necessarily translate into a conclusion that a crime has been committed. However, s 36(1)(b) is triggered by the conviction itself.

[30] Based on the jurisprudence canvassed above, which I consider to be consistent with the language of the relevant provisions, I agree with the Respondent's position that the ID was under no obligation to consider Mr. Gurbuz's arguments surrounding flaws in the Turkish legal system. I appreciate that the ID did undertake some consideration of those arguments, as appears to have also been the case in *Halilaj* and *Mansouri*. However, consistent with Justice McVeigh's conclusion in *Halilaj*, I agree with the Respondent's position that this was not an analysis the ID was required to perform. Given those conclusions, Mr. Gurbuz's application for judicial review must fail, and there is no need for the Court to consider his arguments as to the reasonableness of the ID's finding that he had not established that his conviction by the Turkish appeal court was an act of ethnic persecution.

[31] While the above analysis disposes of this application for judicial review, I wish to note an additional argument raised by Mr. Gurbuz in support of his position that flaws in a foreign legal

system should be relevant to both exclusion and inadmissibility decisions. This argument surrounds the operation of the Pre-Removal Risk Assessment [PRRA] process under Part 2, Division 3 of IRPA. He submits that either an exclusion decision or an inadmissibility decision will result in a claimant being unable to claim refugee status. He also submits that either type of decision will result in the claimant being unable to argue persecution under s 96 of IRPA in the event he or she subsequently seeks a PRRA. He therefore argues that the ability to scrutinize the fairness of the foreign conviction should apply in both exclusion and inadmissibility analyses, because a negative determination in either analysis results in a limitation to the protections subsequently available through a PRRA.

[32] I note that I did not understand the Respondent's counsel to be taking issue with Mr. Gurbuz's argument that a finding of inadmissibility under s 36(1)(b) precludes a claimant from seeking a full PRRA, involving consideration under both ss 96 and 97 of IRPA, and reduces the claimant's entitlement to what is sometimes called a "restricted" PRRA, involving consideration only under s 97. Even if I were to have accepted that this is how the relevant provisions of IRPA operate, it would not have affected the outcome of this judicial review, which turns on the jurisprudence cited above. However, I also have doubt as to the accuracy of the position that the relevant provisions of IRPA operate in this manner.

[33] I accept Mr. Gurbuz's submission that refugee protection may not be conferred on either an applicant who is determined to be inadmissible on grounds of serious criminality or an applicant who made a claim for refugee protection that was rejected on the basis of Article 1F of the Convention. Section 112(3) of IRPA so provides. However, it is s 113 that dictates whether

an applicant for a PRRA gets a full assessment under ss 96 and 97 or a "restricted" PRRA under s 97 only:

Consideration of application	**Examen de la demande**
113 Consideration of an application for protection shall be as follows:	**113** Il est disposé de la demande comme il suit :
(a) an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection;	**a)** le demandeur d'asile débouté ne peut présenter que des éléments de preuve survenus depuis le rejet ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'il n'était pas raisonnable, dans les circonstances, de s'attendre à ce qu'il les ait présentés au moment du rejet;
(b) a hearing may be held if the Minister, on the basis of prescribed factors, is of the opinion that a hearing is required;	**b)** une audience peut être tenue si le ministre l'estime requis compte tenu des facteurs réglementaires;
(c) in the case of an applicant not described in subsection 112(3), consideration shall be on the basis of sections 96 to 98;	**c)** s'agissant du demandeur non visé au paragraphe 112(3), sur la base des articles 96 à 98;
(d) in the case of an applicant described in subsection 112(3) — other than one described in subparagraph (e)(i)	**d)** s'agissant du demandeur visé au paragraphe 112(3) — sauf celui visé au sous-alinéa e)(i) ou (ii) —, sur la base des

or (ii) — consideration shall be on the basis of the factors set out in section 97 and

éléments mentionnés à l’article 97 et, d’autre part :

(i) in the case of an applicant for protection who is inadmissible on grounds of serious criminality, whether they are a danger to the public in Canada, or

(i) soit du fait que le demandeur interdit de territoire pour grande criminalité constitue un danger pour le public au Canada,

(ii) in the case of any other applicant, whether the application should be refused because of the nature and severity of acts committed by the applicant or because of the danger that the applicant constitutes to the security of Canada; and

(ii) soit, dans le cas de tout autre demandeur, du fait que la demande devrait être rejetée en raison de la nature et de la gravité de ses actes passés ou du danger qu’il constitue pour la sécurité du Canada;

(e) in the case of the following applicants, consideration shall be on the basis of sections 96 to 98 and subparagraph (d)(i) or (ii), as the case may be:

e) s’agissant des demandeurs ci-après, sur la base des articles 96 à 98 et, selon le cas, du sous-alinéa d)(i) ou (ii) :

(i) an applicant who is determined to be inadmissible on grounds of serious

(i) celui qui est interdit de territoire pour grande criminalité pour

criminality with respect to a conviction in Canada punishable by a maximum term of imprisonment of at least 10 years for which a term of imprisonment of less than two years — or no term of imprisonment — was imposed, and

déclaration de culpabilité au Canada pour une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans et pour laquelle soit un emprisonnement de moins de deux ans a été infligé, soit aucune peine d'emprisonnement n'a été imposée,

(ii) an applicant who is determined to be inadmissible on grounds of serious criminality with respect to a conviction of an offence outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, unless they are found to be a person referred to in section F of Article 1 of the Refugee Convention.

(ii) celui qui est interdit de territoire pour grande criminalité pour déclaration de culpabilité à l'extérieur du Canada pour une infraction qui, commise au Canada, constituerait une infraction à une loi fédérale punissable d'un emprisonnement maximal d'au moins dix ans, sauf s'il a été conclu qu'il est visé à la section F de l'article premier de la Convention sur les réfugiés.

[34] The combined effect of ss 113(d) and (e) appears to contemplate that someone who has been deemed inadmissible for serious criminality based on a 36(1)(b) analysis still gets the benefit of a PRRA under ss 96 and 97, unless he or she is also found to be a person referred to in s 1F of the Convention. This is because s 113(d), which restricts a PRRA for an applicant who is inadmissible based on serious criminality to consideration based on s 97 only, does not apply to an applicant described in s 113(e)(ii). The applicants described in s 113(e)(ii) include someone found inadmissible on grounds of serious criminality based on language comparable to that contained in s 36(1)(b). The effect of the introductory language of s 113(e) and subparagraph 113(e)(ii) is that a person who has been found inadmissible for this reason remains entitled to a PRRA based on ss 96 and 97, unless that person is also subject to an exclusion finding under Article 1F.

[35] The reference to 1F may in turn import into the PRRA analysis the jurisdiction to consider allegations of corruption or ethnic persecution in the foreign legal system and to consider whether a foreign conviction is genuine, per the jurisprudence in *Hernandez, Altun*, and *Toktok*. This would mean that an applicant is not deprived of PRRA protection under s 96 without such an analysis.

[36] I am not stating a definitive conclusion on the operation of these provisions in Part 2, Division 3 of IRPA, because the parties did not make detailed submissions on the interaction of these provisions, because my decision on this application for judicial review does not turn on any such conclusion, and because this question may arise and be more fully argued in the event Mr. Gurbuz applies for a PRRA in the future. However, I raise the above reservations, about the

interpretation presented at the hearing as to the effect of the inadmissibility finding upon the PRRA process, so that my decision is not read as an adoption of that interpretation.

VI. **Certified Question**

[37] Mr. Gurbuz proposed the following question for certification for appeal:

> If there is a finding that a justice system lacks independence or is politically biased or flawed, is that a factor that should be considered in the equivalency analysis?

[38] Mr. Gurbuz submits that this is an appropriate question for certification. He argues that it is grounded in the particular findings by the ID in the present case as to inadequacies in the Turkish justice system and is a question of general importance because its answer would affect inadmissibility determinations in other cases where the validity of a foreign conviction is impugned.

[39] The Respondent opposes certification, arguing that the law on this point is settled by appellate jurisprudence.

[40] I agree with the Respondent's position. There is no tension in the case law which, as canvassed above in these Reasons, includes binding decisions of the Federal Court of Appeal. I also note that, in *Halilaj*, Justice McVeigh similarly declined to certify a proposed question which focused on the extent to which the s 36(1)(b) analysis should consider the availability of procedural fairness protections in a foreign judicial system in which a conviction occurs. Citing *Li* and *Brannson*, Justice McVeigh noted that the Federal Court of Appeal had already made a

determination that the merits of the conviction outside of Canada are not part of the equivalency test.

[41] I therefore find that the proposed question is not one of general importance appropriate for certification.

VII. **Style of Cause**

[42] Finally, as a housekeeping matter, I note that the Application for Leave and for Judicial Review incorrectly names the Respondent as the Minister of Immigration, Refugees and Citizenship. The correct name of the relevant minister is the Minister of Citizenship and Immigration. My Judgment will accordingly correct the style of cause.

JUDGMENT in IMM-5190-17

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No question is certified for appeal.
3. The style of cause is hereby amended to reflect the correct respondent, the Minister of Citizenship and Immigration.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-5190-17
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