Federal Court  Cour fédérale

Date: 20190723

Docket: IMM-5447-18

Citation: 2019 FC 970

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, July 23, 2019

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

YAO SERGE THEODORE KOFFI

Applicant

and

MINISTER OF IMMIGRATION, REFUGEES AND CITITIZENSHIP CANADA

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] The applicant is an Ivorian citizen. In February 2014, feeling that his safety was compromised by the authorities in power in Côte d'Ivoire at the time, he obtained refugee protection in Canada. However, on September 13, 2018, the Immigration and Refugee Board of Canada, Immigration Division [ID], found him to be inadmissible to Canada by reason of his

membership, between 1998 and 2008, in an organization — the Fédération Estudiantine et Scolaire de Côte d'Ivoire (Student Federation of Côte d'Ivoire) [FESCI] — that there are reasonable grounds to believe has engaged in acts of terrorism. That decision was issued pursuant to paragraphs 34(1)(c) and (f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act].

[2] Being of the view that the decision was based on documentary evidence that had little credibility or reliability, and that his rights to procedural fairness had been breached on the basis that he was not able to cross-examine the authors of those documents and thus verify whether the contents of the documents were reliable or credible, the applicant seeks to have the decision set aside by means of this judicial review.

[3] For the reasons that follow, the applicant's application is dismissed.

II. BACKGROUND

[4] The facts underlying this application may be summarized as follows. The applicant arrived in Canada on October 11, 2011, after having fled Côte d'Ivoire as a result of political tensions that followed the 2010 presidential election. Being associated with the defeated president, Laurent Gbagbo, he claimed that he had been targeted by people close to the newly elected president, Alassane Ouattara, to the point of fearing for his life and the lives of members of his family. He was granted refugee status on February 27, 2014.

[5] Four years later, namely, in January 2018, an inadmissibility report, in relation to his membership in FESCI, was issued against the applicant pursuant to subsection 44(1) of the Act. This was followed by a hearing before the ID, as provided under subsection 44(2) of the Act.

[6] At that hearing, the applicant did not dispute that he had been a member of FESCI. According to the evidence in the record, he became a member of this organization in 1998, moved up within its ranks and, in May 2005, became Secretary General, a position he held until January 2008. The issue centres on allegations of abuse and other wrongdoing attributed to FESCI by the respondent. The applicant denies that the organisation of which he was a member for about ten years engaged in such acts and disputes the reliability and credibility of the documentary evidence adduced by the respondent in support of those allegations. In particular, he submits that FESCI is a lawful student organization in Côte d'Ivoire, that it has not been designated as a terrorist entity under the relevant Canadian legislation, and that it has never received authorization by its general assembly to engage in terrorist activity or to act as a private militia for the regime in power.

[7] Relying on the definition provided by the Supreme Court of Canada in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 [*Suresh*] of the term "terrorism" under section 19 of the former Act (*Immigration Act*, RSC 1985, c I-2), the ID found the respondent's evidence sufficient to find that there were reasonable grounds to believe that FESCI had engaged in "terrorism" within the meaning of paragraph 34(1)(c) of the Act.

[8] More specifically, it found this evidence, from [TRANSLATION] "various sources", to be [TRANSLATION] "credible and trustworthy", to the extent that it was gathered by experienced, objective and credible observers from organizations such as the United Nations [UN], Human Rights Watch and Freedom House. It made the following finding:

> [TRANSLATION]
>
> [16] Following an analysis of the documentary evidence in the record, a clear image of the acts attributed to FESCI emerges. In order to advance its political and social aims, FESCI has for years committed acts of intimidation towards the civilian population and attempted to compel the Ivorian government and the United Nations (UN) to act or to refrain from acting. These violent acts targeted the following, among others:
>
> - students, to restrict their rights to freedom of association;
> - the civilian population, to compel it to support its cause;
> - politicians, to compel them to acquiesce to FESCI's demands;
> - media that were too critical of FESCI's positions and actions;
> - judicial officials who attempted to hold FESCI's members to account; and
> - UN staff and facilities.
>
> We are talking about killings, beatings, lynchings, rapes, threats, etc. For example, physically assaulting students from a different student association, an attempted lynching of a minister, the kidnapping of a student from a different student association, threats against and beating media representatives with sticks, the rape of a student from a different student association, beatings of judges, and attacking a police station. Even the organization's statues provide for the use of [TRANSLATION] "any form of action that it fells to be opportune, necessary and effective in achieving its aims". In addition, during his testimony at a hearing on June 5, 2018, FESCI's co-founder and first secretary general, Mr. Ahipeaud, called as a witness by Mr. Koffi, reluctantly acknowledged that there had been [TRANSLATION] "*complicated events*" and [TRANSLATION] "*extremely difficult situations*" of [TRANSLATION] "*generalized fear*" with regard to private militias.

> He ultimately admitted that there had been some violent acts on the part of certain elements of FESCI, but not on the part of its leaders.
>
> [Footnotes omitted.]
>
> (Certified Tribunal Record at pp 10-11 [CTR])

[9] It also found that the applicant had tried, during his testimony, to play down his knowledge of the acts of violence attributed to FESCI while he was a militant of that organization for about ten years and was its principal leader for nearly two and a half years. In particular, the ID was not satisfied with the explanations provided by the applicant in this regard, characterizing them as [TRANSLATION] "lame".

[10] As noted at the outset, the applicant takes issue mainly with the weight given by the ID to the evidence adduced by the respondent to support its arguments as to the abuses committed by FESCI, evidence which in his view is unreliable and not credible, as it is uncorroborated, contradictory, implausible and, in certain cases, completely fabricated.

[11] To illustrate his argument, the applicant pointed to five (5) of the thirty (30) documents from various sources adduced by the respondent. They are the following documents:

a. Exhibit C-9: Human Rights Watch, "*Because they have guns… I'm left with nothing." The Price of Continuing Impunity in Côte d'Ivoire*, Vol 18, No 4 (A), May 2006 (CTR at pp 281-302);

b. Exhibit C-14: Human Rights Watch, *"The Best School" Student Violence, Impunity, and the Crisis in Côte d'Ivoire*, May 2008 (CTR at pp 448-564);

c. Exhibit C-17: United Nations Operations in Côte d'Ivoire, Human Rights Division, *Report on the Human Rights Situation in Côte d'Ivoire: Report No. 4*, February 2006 (CTR at pp 663-703);

d. Exhibit C-18: United Nations Operations in Côte d'Ivoire, Human Rights Division, *Report on the Human Rights Situation in Côte d'Ivoire*, October 2005 (CTR at pp 705-755); and

e. Exhibit C-23: Freedom House, *Côte d'Ivoire: Une Decennie de Crimes Graves Non Encore Punis (A Decade of Serious Crimes Left Unpunished)*, April 2014 (CTR at pp 851-895).

[12] He added that the fact that the reports were not signed and that, as a result, he was unable to identify and cross-examine their authors, tainted, on this occasion, the ID's decision on a procedural fairness level.

III. ISSUES AND STANDARDS OF REVIEW

[13] The issue here is to determine whether the ID was wrong in finding, based on the evidence it had before it, that there are reasonable grounds to conclude that FESCI, of which the applicant was a member, engaged in terrorism. It must also be determined whether the ID breached its duty of fairness to the applicant.

[14] It is well established that the ID's decisions as to inadmissibility on grounds of security under paragraph 34(1)(f) of the Act are reviewable on a standard of reasonableness (*Saleheen v*

Canada (Public Safety and Emergency Preparedness), 2019 FC 145 at para 24; *Alam v Canada (Citizenship and Immigration)*, 2018 FC 922 at para 11 [*Alam*]).

[15] As for the procedural fairness argument raised by the applicant, this is reviewable on a correctness standard (*Mission Institution v Khela*, 2014 SCC 24 at para 79).

[16] I will dispose of this argument first, but before doing so, I must say a few words on the late filing of this application for judicial review. The respondent appears to make this an argument for dismissing the application, although emphasizing that the matter was effectively settled by the Court when it granted leave to proceed this past April 4. Indeed, this issue was decided, with the Court extending the time for the applicant to file his application at the moment it granted leave to proceed. Given that I have neither the authority nor the desire to revisit that decision, I will not address the respondent's argument. Moreover, the respondent rightly did not insist on this point at the hearing.

IV. ANALYSIS

A. *No breach of rules of procedural fairness in this case*

[17] The applicant essentially submits that he was unable to properly defend himself against the inadmissibility proceedings to which he was subject because the authors of the reports incriminating FESCI were unknown, and that he was thus deprived of the opportunity to summon them to appear before the ID in order for them to be cross-examined. He is also of the view that his inability to double check the allegations against FESCI was exacerbated by the

absence, in the said reports, of corroborating documentary evidence such as photographs, death certificates, medical certificates, complaints filed with the authorities or police reports.

[18] I cannot support these recriminations. First, the fact that there was a lack of [TRANSLATION] "corroborating evidence" in the reports incriminating FESCI and that the reports were not signed or attributed to a specific author does not engage considerations of procedural fairness; rather, it speaks to the matter of how much weight should be given to these reports, which is relevant to a review of the reasonableness of the impugned decision. In fact, once it has been determined that the evidence is credible and trustworthy, the question of how the evidence was obtained becomes relevant "merely as to the weight attached to the evidence" (*Sittampalam v Canada (Citizenship and Immigration)*, 2006 FCA 326 at para 49 [*Sittampalam FCA*]).

[19] With specific regard to the reports being unsigned, it goes without saying that the authors of these reports are the organizations themselves. This Court, and I will return to this point, has affirmed on numerous occasions the right — and even the duty — of administrative decision-makers given authority under the Act to rely on this type of documentary evidence to inform themselves about the conditions in a given country and to make findings based on such evidence (*Sittampalam v Canada (Citizenship and Immigration)*, 2009 FC 65 at para 64 [*Sittampalam FC*]; *Mahjoub v Canada (Citizenship and Immigration)*, 2006 FC 1503 at paras 72-74 [*Mahjoub*]; *Bakir v Canada (Minister of Citizenship and Immigration)*, 2004 FC 70 at paras 33-35 [*Bakir*]).

[20] As to the argument with respect to the impossibility of cross-examining the authors of these reports, this was not raised before the ID. However, case law consistently holds that a procedural defect must be raised at the earliest opportunity in order for an administrative decision-maker to be able to try and remedy the situation and that a failure to do so amounts to an implied waiver of the right to raise this argument on judicial review (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-26; *Hennessey v Canada*, 2016 FCA 180 at paras 20-21; *Duversin v Canada (Citizenship and Immigration)*, 2018 FC 466 at para 26).

[21] In any event, the reports in question here are not, for the most part, attributed to any specific author. As I mentioned earlier, they are attributed to the organization that publishes them, which does not undermine their reliability.

B. *ID decision is reasonable*

[22] It is important to remember, at the outset, that it is not for the Court to determine, from the evidence that was before the ID, whether there are reasonable grounds to believe that the applicant is inadmissible. Rather, its role is to determine whether the ID's finding that such grounds exist is reasonable (*Alam* at para 13). In this regard, it must show deference to the findings made by the ID and intervene only if it is satisfied that those findings fall outside the range of "possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[23] The applicant was found to be inadmissible on the basis of paragraph 34(1)(f), in reference to paragraph 34(1)(c) of the Act. These provisions read as follows:

Security	**Sécurité**
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	34 (1) Emportent interdiction de territoire pour raison de sécurité les faits suivants :
. . .	[…]
(c) engaging in terrorism;	c) se livrer au terrorisme;
. . .	[…]
(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).	f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

[24] The term "terrorism" remains undefined in the Act. In *Suresh*, this term, employed at section 19 of the former Act, which is the predecessor, of sorts, of section 34 of the Act, was defined as follows:

> 98 In our view, it may safely be concluded, following the *International Convention for the Suppression of the Financing of Terrorism*, that "terrorism" in s. 19 of the Act includes any "act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act". This definition catches the essence of what the world understands by "terrorism". . . .

[25] According to section 33 of the Act, facts, acts or omissions referred to in section 34 of the Act are assessed on whether "there are reasonable grounds to believe that they have occurred, are occurring or may occur". As the law currently stands, this standard of assessment requires more than a mere suspicion, but it nonetheless falls below the balance of probabilities standard applicable in civil matters (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114 [*Mugesera*]).

[26] According to this middling standard, "[i]n essence, reasonable grounds [to believe such acts have occurred, are occurring or may occur] will exist where there is an objective basis for the belief which is based on compelling and credible information" (*Mugesera* at para 114).

[27] It should also be recalled that the Act does not require that the ID be bound by any legal or technical rules of evidence (*Sittampalam FCA* at para 49), and that it provides it with the authority to receive evidence it deems credibly and trustworthy and base its decision on that evidence, even if such evidence would not technically be admissible in a court of law (*Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 at para 39).

[28] That being said, the only issue that remains, in terms of the reasonableness of the ID's decision, is the weight it assigned to the documentary evidence adduced by the respondent to support its contention that FESCI is — or used to be — an organization for which there are reasonable grounds to believe that it engaged in terrorism. As we have seen, the applicant's membership in FESCI is neither disputed, nor disputable.

[29] The applicant essentially went about attempting to point out certain flaws — lack of corroboration, contradictions, implausibilities, inconsistencies and fabrications — in 5 (exhibits C-9, C-14, C-17, C-18 and C-23) of the 30 reports produced by the respondent in support of its inadmissibility proceeding, and arguing that this sampling was somehow sufficient to discredit the evidence in its entirety.

[30] Let us consider that evidence.

[31] Exhibit C-9 is a report from Human Rights Watch from May 2006, on the continuing impunity in Côte d'Ivoire. The report describes, among other things, "recent" acts of violence committed by government and pro-government forces against suspected opponents of the regime. In that regard, there are references to anti-UN attacks that occurred in mid-January 2006, including one, on January 18, 2006, in which individuals associated with FESCI allegedly participated and which resulted in the deaths of 5 people and injuries to 39 others, of which a certain number of victims were within the ranks of FESCI. The report also cites acts of harassment, intimidation and violence attributed to FESCI throughout 2005 and directed against members of a rival student association, the Association Générale des Élèves et Étudiants de Côte d'ivoire [AGEECI], in Abidjan, the country's economic capital. The report goes into specific detail, based on a victim's account, of an incident that occurred in December 2005.

[32] The report claims to be based:

> on Human Rights Watch interviews in Côte d'Ivoire in March 2006 with victims and eyewitnesses of human rights abuses, along with officials from the Ivorian security forces, the United Nations Operation in Côte d'Ivoire (ONUCI), members of the New Forces

> leadership, local government officials, militia leaders, representatives from local and international non-governmental organizations, journalists, and diplomats.
>
> (CTR at p 287)

[33] The applicant disputes the reliability of this report, essentially on the basis (i) that we do not know who the author is, or the names of the city and school in which the incident of December 2005 allegedly occurred; (ii) that said report is essentially based on hearsay; (iii) that the report makes no reference to any efforts made by the report's authors to ensure the veracity of what was reported therein, in particular as to the purported assailants' membership in FESCI; and (iv) that it contains no probative evidence, such as photographs or medical certificates, that would be able to support the statements made in the report. For reasons that I will elaborate on below, this point of view cannot be accepted.

[34] At the hearing, the applicant also brought to the Court's attention that the exact date of the anti-UN attack involving members of FESCI that occurred in January 2006 was not clearly indicated in the respondent's evidence. Thus, he claims, the report, Exhibit C-9, refers to January 18, while the other report, Exhibit C-16, refers to January 16, 2006. In his view, this is evidence of a contradiction that undermines the reliability of report C-9. However, both reports refer to this attack involving FESCI. The date gap (January 16 or 18, 2006) is of no consequence, whatever the applicant may assert. Given the number of abuses attributed to FESCI in the evidence adduced by the respondent, this error is, at worst, purely peripheral in the present circumstances.

[35] Exhibit C-14 is another report by Human Rights Watch, this one dated May 2008. The report deals with, in particular, student violence in Côte d'Ivoire. It contains numerous references to FESCI and acts of political violence attributed to it since at least 2002.

[36] The methodology used in the writing of this report is described as follows:

> This report is based on field research conducted during August, September, and October 2007 in Abidjan and Bouaké, Côte d'Ivoire. As part of this research, Human Rights Watch interviewed over 50 current and former university students, including the leaders of seven different student unions and associations. The large majority of students interviewed identified themselves as either current or former members of FESCI. Of the 50, five were interviewed in small groups, and the rest were interviewed individually.
>
> In addition to students, Human Rights Watch interviewed Ivorian university professors; high school teachers; police officers; judges; current and former officials with the Ministries of Higher Education, Justice, and Interior; representatives from the New Forces rebels; representatives from the United Nations Mission in Côte d'Ivoire (ONUCI); diplomats; officials working in a mayor's office; journalists; transporters unions; and merchants operating near university facilities.
>
> In addition to this 2007 research, in previous missions to Côte d'Ivoire since 2000, Human Rights Watch has tracked and documented violence perpetrated by members of pro-government groups such as FESCI. Those missions involved interviews with a wide circle of sources including victims of FESCI abuses, diplomats, United Nations officials, members of non-governmental organizations (NGOs), and Ivorian government officials from all sides. Some of this research has been used in the present report.
>
> Care was taken with victims to ensure that recounting their experience did not further traumatize them or put them at physical risk. The interviews were conducted in French. The names of all witnesses to incidents have been withheld in order to protect their identity, privacy, and security. At their request, the names of police, judges, and several other government officials have been withheld due to security concerns. Human Rights Watch identified victims and eyewitnesses through the help of several local

> organizations, all of whom requested that their identities remain confidential.
>
> [Footnotes omitted.]
>
> (CTR at pp 467-468)

[37] At over 100 pages, the report is, to say the least, damning for FESCI, but the applicant, focusing on certain incidents referred to in the report, is of the view, for the same reasons as for report in Exhibit C-9, that it is unreliable. In particular, he questions the statements made by two witnesses, reproduced in the report, in relation to the death of one of the founding members of AGEECI, Habib Dodo, attributed to members of FESCI, statements that in his opinion, merited closer scrutiny by the report's authors, which was not done.

[38] The applicant also wonders whether the report's authors may have completely fabricated the excerpt of the report concerning an alleged attack by FESCI members against the judiciary in March 2004, given that he fails to see any logic behind the attack which purportedly originated with the arrest and conviction of three FESCI members for assault and battery. As these individuals were quickly released by the chief public prosecutor, there is nothing that would therefore explain why FESCI would have felt the need to storm the courthouse in Abidjan a few weeks later to beat up judges.

[39] However, I note from reading this excerpt from the report (CTR at p 528) that what appears to have raised FESCI's ire was the suspension, by the Minister of Justice at the time, of the prosecutor who freed those individuals. The attack on the Abidjan courthouse was thus

retaliation for this suspension, the pretext being the swearing-in of two judges appointed by that minister.

[40] The applicant also deplores the fact that the report's authors assign a political connotation to FESCI's activities, on the basis that this connotation was merely "felt" by many students, which in his view is far from being probative evidence that FESCI had, in fact, engaged in such activities. However, to the extent that it advances the applicant's case, which is debatable, this argument is used out of context. This allusion to the feelings of a good number of students is found in the portion of the report that describes, in a general manner, student militancy in Côte d'Ivoire in the 1990s and the almost constant confrontations with law enforcement which, according to the report, characterized that decade's environment. The authors note that for many students, these confrontations were "felt" as political actions mounted against a corrupt and anti-democratic government, actions they nonetheless thought were unlikely to improve their situation (CTR at pp 479-480). This argument, taken out of context, has no merit.

[41] Exhibit C-17 is a report from the UN's Human Rights Division, dated February 2006. It deals with the human rights situation in Côte d'Ivoire for the period between August and December 2005. From the outset, the applicant complained that the ID found the report credible while Exhibit C-9, which, as we have seen, was written by Human Rights Watch, notes abuses committed against the civilian population by UN peacekeeping forces stationed in Côte d'Ivoire.

[42] This argument is similarly without merit, as the report in C-9 instead describes the attack launched against the UN base in Guiglo in January 2006. It is true that the report mentions that

the UN investigated the incident so as to determine whether the response of its peacekeeping forces during the incident had been proportionate and appropriate, given the threat level. However, nowhere is any reference made to abuses committed by those forces against the civilian population. If the results of that investigation had revealed such abuses, it would have been open to the applicant to have submitted these before the ID or, at the very least, to have notified it of their existence. None of this was done, and it would thus have been unreasonable to expect the ID to be deprived of the facts contained in the UN's Human Rights Division report in its consideration of this matter in the absence of such evidence.

[43] The applicant further questions how the authors of the report in Exhibit C-17 were able to specifically identify FESCI as being responsible for some of the abuses referred to in the report when, in his view, the authors acknowledged at the outset not knowing who committed those abuses. This argument does not withstand scrutiny. An objective reading of the report shows that in many cases, unidentified armed gangs were the primary perpetrators of the abuses and crimes committed during this short period from August to December 2005. However, certain groups, including FESCI, were directly associated with very specific incidents, such as the kidnapping, on the night of October 30-31, 2005, of a student from the University of Cocody who was in charge of the youth wing of an opposition party, or the attempted lynching, a few weeks earlier, of the Minister of State for Territorial Administration. I see nothing in this report that would lead the ID to distance itself from it.

[44] Lastly, the applicant challenges the reliability of the report in Exhibit C-17, questioning the authors' reporting of an incident that was not attributed to FESCI, namely the detention, in

October 2005, by the police in the city of Yamoussoukro, of a certain Mr. Kaba. At the hearing of this case, I pointed out to the applicant's counsel, Mr. Dakouri, that this criticism appeared to be based on [TRANSLATION] "research and verifications" carried out after the fact, that is to say, once the ID had already issued its decision. Mr. Dakouri confirmed that this was indeed the case and acknowledged that there was no need to take this criticism into account, given that the facts intended to support it were not brought to the ID's attention.

[45] Exhibit C-18 is also a report by the UN's Human Rights Division. This one deals with the human rights situation in Côte d'Ivoire, this time for the period between May and July 2005. The applicant, as with the other reports, reiterated that there was no assurance that the students linked to the misdeeds attributed to FESCI in the report were in fact members of that student organization, as that link had not been corroborated. The use of the expression [TRANSLATION] "FESCI element" to designate those students allegedly attests to the ambivalence of the authors as to whether those students actually belonged to FESCI. The same complaints were voiced with regard to two more incidents attributed to FESCI in this report, namely the beating of a journalist with sticks in July 2005 and the kidnapping and rape of a student in June 2005.

[46] In addition, making specific reference to the kidnapping of two students distributing flyers announcing a public meeting to which FESCI was opposed, the applicant finds this incident improbable on the basis that it would have occurred in a busy public place, namely in one of Abidjan's public transit stations, while the Human Rights Watch report in Exhibit C-9 refers to another incident in which FESCI members purportedly fled the crowd. The applicant infers from this that FESCI operates unbeknownst to crowds.

[47] Such an inference, made on the basis of a single incident among several, also taken out of context, cannot, on its very face, stand. Moreover, I note that the incident in question involved a kidnapping, while in the report in Exhibit C-9, it involved an attempted murder. The relevant passage from the report describing the incident, as recounted by one of the victims, reads as follows:

> When I woke up, they started asking whether I worked for the rebellion, for Ouattara, or for Soro. Then they said they were taking us to the beach to kill us by drowning. The beach wasn't far and they marched us there, which started to attract attention. They threw us in the water. A lifeguard came and FESCI started to threaten him. A crowd began to gather and people started asking questions. Eventually the crowd got big enough that the FESCI members left. The lifeguard called an ambulance and they took us to the hospital.
>
> [Footnotes omitted.]
>
> (CTR at p 302)

[48] The contexts are therefore very different, and inferences of commonalities in FESCI's methods, rash.

[49] In addition, the applicant once again tries to discredit the report in question on the basis of the manner in which its authors describe two incidents that are not attributed to FESCI. The first made reference to a town or village and to a militia, neither of which allegedly existed. The second recounts the rape of a young Malian woman attributed to an officer from the Duékoué police station, a rape which, in the applicant's view, would not have occurred at that station according to information revealed in the report. Yet here again, the applicant's claims are based on research and verifications carried out after the ID had issued its decision. I note that the

applicant's counsel, at the hearing of this matter, conceded that he could not resort to such a process to support his challenge of the ID's decision.

[50] Lastly, Exhibit C-23 is a Freedom House report on serious crimes committed in Côte d'Ivoire between 2002 and 2011 which have gone unpunished. It contains [TRANSLATION] "a compilation of 10 reports published by Ivorian human rights organizations" detailing crimes — violations of the right to life, torture and other inhuman and degrading treatment or punishment, violence against women, kidnappings and disappearances — perpetrated by [TRANSLATION] "a variety of actors from all parties to the political-military crisis", including FESCI (CTR at p 853).

[51] The applicant accuses the authors of the report of lacking prudence and impartiality by associating FESCI with the regime in power when, in his view, there is no evidence of such close ties. However, Freedom House is hardly the only human rights organization to have inferred such close ties (Exhibit C-9, CTR at pp 301, 307; Exhibit C-13, Human Rights Watch, , Vol 19, No 11(A), August 2007, CTR at p 384 [Exhibit C-13]; Exhibit C-16, United Nations Operations in Côte d'Ivoire, Human Rights Division, *Human Rights Situation in Côte d'Ivoire: Report No. 5*, June 2006, CTR at p 625 [Exhibit C-16]; Exhibit C-27, Immigration and Refugee Board of Canada, Research Directorate, *Côte d'Ivoire: Current situation of the Federation of Students and Schools in Côte d'Ivoire (FESCI), including the conflict between internal factions, in particular since the cease-fire between rebels and government forces (2003-January 2004)*, January 19, 2004, CTR at p 988).

[52] He also lamented the lack of credibility of the account of the rape of a young woman by two members of FESCI who accused her of being a member of an opposition party that had organized a march to denounce those in power. The applicant could not understand how the young woman could have initially sympathized with one of the two individuals even though the party of which she was a member had been muzzled by the party in power and FESCI was supposedly a militia close to those in power. But it is possible that this was the case. There is nothing implausible about that. The argument is pure conjecture and, to a certain extent, disconcerting for victims of sexual violence.

[53] In short, the applicant's argument that the five reports are riddled with contradictions, fabrications, implausibilities and inconsistencies, and that the ID should have dismissed them as unreliable and not credible on that basis, cannot stand. It has no basis in the evidence.

[54] The same goes for the argument that these reports, along with the rest of the evidence submitted to the ID by the respondent, should be dismissed on the ground that the abuses attributed to FESCI are not corroborated. Since *Mugesera*, the case law has consistently held that the reliability of reports from international and non-governmental organizations such as the UN, Human Rights Watch, Amnesty International and Freedom House, is generally accepted (*Mahjoub* at para 74; *Ndabambarire v Canada (Citizenship and Immigration)*, 2010 FC 1 at para 36 [*Ndabambarire*]; *Shen v Canada (Citizenship and Immigration)*, 2017 FC 115 at para 19). The reason for this is that these organizations have built up worldwide reputations for credibility over the years, such that reports issued by them are recognized for their "general reputation for credibility" (*Mahjoub* at para 72).

[55] Considered to be not only credible, but also independent, sources, these reports are used regularly, and with good reason, by decision-makers at all levels in the field of immigration (*Bakir* at paras 33-35; *Sittampalam FC* at para 64; *Mahjoub* at para 73).

[56] But what must be remembered above all, as this Court reminded us in *Ndabambarire*, is that while they may not be the best evidence, these sources of information are generally acknowledged to have sufficient probative weight to meet the burden of proof set out at section 33 of the Act, which requires, I note, that the belief on which reasonable grounds to believe that the facts, acts or omissions set out in section 34 occurred, are occurring or may occur, be founded on more than mere suspicions, without having to meet the higher burden of proof on a balance of probabilities applicable in civil matters (*Ndabambarire* at para 36).

[57] It suffices, *Mugesera* tells us, that reasonable grounds to believe will exist "where there is an objective basis for the belief which is based on compelling and credible information" (*Mugesera* at para 114), which does not require, in particular, that it be based on corroborated information. In fact, in *Canada (Citizenship and Immigration) v USA*, 2014 FC 416, this Court found that the Supreme Court, in *Mugesera*, had waived the requirement for corroboration that had previously held sway:

> [23] The Court in *Mugesera* described the need for information (evidence) that on an objective basis (as measured by the reasonable person assessing the probative value of the evidence) can be considered compelling (persuasive) and credible (reliable as to its source). This standard is entirely different from that of establishing "more than a mere suspicion". It is also the meaning that the Supreme Court has indicated should be ascribed to the statutory standard of "reasonable grounds to believe," and which I am bound to apply.

> [24] The respondent also argued that the test should include the term "corroborated". This was the third element of the standard as it was stated in the *Sabour* decision, i.e. "compelling, credible and corroborated information", to which case the Supreme Court made reference above. However, the Court clearly did not include the term "corroborated" when adopting the test from *Sabour*. To add the requirement of corroboration would set too high a standard, such as where there exists credible and compelling evidence of torture from an individual, which cannot be corroborated by other sources. Indeed, by requiring corroboration, the court would be imposing a standard higher than that required in criminal law to convict someone beyond a reasonable doubt. As stated by David Paciocco and Lee Stuesser in *The Law of Evidence,* 6th ed (Toronto: Irwin Law Inc. 2011) at 522 in regards to corroboration of evidence:
>
> > Strict corroboration rules are becoming less common and much less technical than they once were. They are being repealed and in some cases replaced by other rules that are intended to provide guidance to triers of fact.
>
> [Emphasis added]

[58] I agree with this statement. The type of all-encompassing corroboration sought by the applicant would impose a standard that would be far too high. Such an approach would in my view fail to take into account the difficult, and often dangerous, conditions faced by humanitarian workers in these organizations with worldwide reputations, and of the care they must take to protect the identity of victims and witnesses who agree to work with them so as to prevent any retaliation against them, as is described in the report in Exhibit C-14, reproduced at paragraph 36 of these reasons. Although the fruits of their labour do not necessarily constitute the best evidence, in a strictly legal sense of the word, it is often the best evidence available to immigration authorities to judge the prevailing conditions in certain parts of the world ruled by totalitarian and autocratic regimes in which information does not circulate freely. This is not to say, however, that information provided by these organisations benefits from an irrefutable

presumption of infallibility, only that it requires more than what the applicant has proffered in this case to deem it unreliable.

[59] It is at this point that it is necessary to distinguish the case law relied upon by the applicant. First, *Prosecutor v Callixte Mbarushimana*, ICC-01/04-01/10, Decision in relation to confirmation of charges (December 16, 2011), a proceeding before the International Criminal Court and cited at paragraph 48 of the applicant's reply memorandum, involved the international criminal liability of the defendant. It is clear that such criminal proceedings require direct evidence, beyond a reasonable doubt, of the facts and actions of which the defendant is accused. As we have seen, the ID is not held to such a standard of proof.

[60] *Jalil v Canada (Citizenship and Immigration)*, 2006 FC 246 [*Jalil*], as the respondent points out, did not concern documents of the same nature as those in question here, namely documents originating from international and non-governmental organizations "with worldwide reputations for credibility" (*Mahjoub* at para 72). Rather, it was in regard to one document from the Canada Border Services Agency and another from a website which states that it "provides comprehensive, searchable and continuously updated information relating to terrorism, low intensity warfare and ethnic/communal/sectarian strife in South Asia" (*Jalil* at para 33). The applicant having shown to the satisfaction of the Court that the two documents contained information from unreliable sources found on the internet, many of which were not identified with any specificity, their accuracy, reliability and credibility were deemed doubtful (*Jalil* at para 34). The evidence submitted by the applicant in that case regarding the reliability of the two

documents, including expert evidence, was overwhelming. There is nothing of the sort in this case.

[61] Nor does *Cacha Collas v Canada (Citizenship and Immigration)*, 2016 FC 820 [*Cacha Collas*] advance the applicant's case any further. Indeed, the question that was posed in that case was the opposite of the one in this case because what was "pointedly disputed" was the applicant's alleged membership in an organization that was known to engage in terrorism (*Cacha Collas* at para 7).

[62] The government's evidence in that case was based mainly (i) on a judgment convicting the applicant for treason, a judgment that was found to have been issued on the basis of an incriminating statement given under torture; (ii) on a book about which nothing was known, written by a former spokesperson for the National Terrorism Directorate in Peru who was convicted twice for defamation; and (iii) on an article from a Peruvian daily newspaper which was merely a clip on a press conference held the day before the article was published. The ID found the government's evidence insufficient to declare the applicant inadmissible. However, the Immigration Appeal Division found otherwise. Its decision was essentially based on the book and newspaper article, two documents that the Court found to be neither conclusive nor reliable (*Cacha Collas* at paras 3-58).

[63] Clearly, in *Cacha Collas*, it was a question of evidence of a different nature and of dubious quality, evidence which has nothing in common with that submitted before the ID in this case.

[64] Lastly, the applicant referred the Court to this Court's decision in *Bouchard v Canada (Justice)*, 2018 FC 559, a matter involving the review of a decision of the Minister of Justice, made under provisions of the *Criminal Code*, RSC 1985, c C-46, refusing to allow a request to review a murder conviction based on an alleged miscarriage of justice. It is also clear that that decision, issued in a completely different statutory context, is of no help to the applicant.

[65] It is important to remember that this case is not one in which, as we have often seen, the administrative decision-maker failed to consider documentary evidence contradicting the findings made by that decision-maker. On the contrary, in this case, there is a convergence of all of the documentary evidence, which, as the ID noted, is from a variety of credible and trustworthy sources, on FESCI's actions at the time the applicant was a member. Thus the ID had at its disposal evidence that is, for all intents and purposes, monolithic and whose reliability is generally accepted, which enabled it, to my mind, to conclude as it did, at least when its decision is reviewed on a standard of reasonableness.

[66] A brief overview of the other reports produced by the respondent before the ID lists the following acts, attributed to FESCI:

a. The commission of acts of sexual violence and harassment, including gang rapes of two opposition activists (Exhibit C-13, CTR at pp 385-387, 420; Exhibit C-24, Adja Ferdinand Vanga et al, "La violence à l'école en Côte d'Ivoire : quelle implication des syndicats d'tudiants et d'élèves?", Colloque international Éducation, Violences, Conflits et Perspectives de Paix en Afrique, Yaoundé, March 6-10, 2006, CTR at p 904 [Exhibit C-24]);

b. The use of violence in order to control economic activity on a university campus, more specifically with regard to the assignment of housing and the awarding of contracts on campus (Exhibit C-13, CTR at p 385; Exhibit C-22, Yacouba Konate, *Les enfants de la balle : de la FESCI aux mouvements de patriotes*, Université d'Abidjan-Cocody, CTR at pp 837, 842; Exhibit C-29, International Federation for Human Rights, *Attaque d'une ONG des droits de l'homme,* May 25, 2007**,** CTR at p 1038 [Exhibit C-29]);

c. The imposition, by coercive methods, of a boycott to compel university professors to resume teaching courses while they were on strike (Exhibit C-16**,** CTR at p 633);

d. Frequent acts of harassment, intimidation and violence against students and other groups deemed to be opposition supporters (Exhibit C-13, CTR at p 385; Exhibit C-16, CTR at pp 628, 633; Exhibit C-29, CTR at p 1038);

e. Summary abuses, use of torture and arbitrary arrests (Exhibit C-16, CTR at p 627);

f. The 2006 lynching of the Minister of Economic Infrastructures, Mr. Patrick Achi, accused by FESCI of being a rebel because of his membership in an opposition political party (Exhibit C-16, CTR at p 629);

g. The total seizure of control of a television network's studios for the purpose of forcing its technicians to broadcast a message from the applicant urging the country's youth to take to the streets to liberate the country (Exhibit C-16, CTR at p 650);

h. Barbaric acts against and mistreatment of elders, in particular by removing them from hotel rooms, parading them naked in the streets and dousing them in gasoline (Exhibit C-16, CTR at p 655);

i. Threatening a family accused by FESCI of having caused the death of their daughter, a former FESCI member, as well as the commission of misdeeds right in the middle of her funeral service (Exhibit C-16, CTR at p 655);

j. The commission of physical violence, assault and battery on public roadways and destruction of property (Exhibit C-19, United Nations Operation in Côte d'Ivoire, Human Rights Division, *Human Rights Situation in Côte d'Ivoire: Report No. 6*, March 2007**,** CTR at p 770; Exhibit C-24, CTR at p 905);

k. The kidnapping, torture and forcible confinement of four Cameroun citizens and a citizen of Benin on the University of Cocody campus, accused by FESCI of being involved in counterfeit currency operations and of belonging to a rival student organization (Exhibit C-20, United Nations Operation in Côte d'Ivoire, Human Rights Division, *Report on the Human Rights Situation in Côte d'Ivoire*, mars 2005, CTR at p 803); and

l. The ransacking of the headquarters of the Ivorian Human Rights League (*Ligue ivoirienne des droits de l'homme*) in May 2007, with no intervention on the part of police (Exhibit C-25, International Crisis Group: *Côte d'Ivoire: Peace as an Option*, Africa Report No. 109, May 17, 2006, CTR at p 976; Exhibit C-29, CTR at p 1037).

[67] With respect to the five reports singled out by the applicant in this case, the respondent himself listed a certain number of violent acts attributed to FESCI but about which the applicant was silent in his memorandum, such as attacks carried out against members of the political opposition, journalists, members of human rights organizations and members of AGEECI (Exhibit C-14, CTR at p 458; Exhibit C-9, CTR at p 301); the arrest, detention and assault

committed by FESCI members against a member of AGEECI, Guipé Naguë, in September 2005 (Exhibit C-17, CTR at p 678); the ransacking of an Abidjan police station by FESCI members in order to free two of its members (Exhibit C-14, CTR at p 552); and a statement by the applicant demanding the resignation of the Minister of Public Safety after the latter denounced the violence committed by FESCI (Exhibit C-14, CTR at p 554).

[68] The applicant did submit two statements to the ID, one by the president and founder of the *Fondation Ivoirienne des Droits de l'Homme et de la vie Politique*, now a political refugee in Italy, and another by an Ivoirian academic who had had to deal with student associations in Côte d'Ivoire, including FESCI, in the 1990s and 2000s. The ID considered both documents, in which it noted the ambivalence as to certain actions conducted by FESCI, but these carried little weight compared with the evidence as a whole.

[69] Having consulted both documents, I cannot conclude, in light of the evidence as a whole, that the ID's decision to assign these very little weight was unreasonable.

[70] Lastly, at the hearing of this judicial review, the applicant, still hoping to undermine the reliability and credibility of the documentary evidence produced by the respondent, questioned the methodology used in drafting the report in Exhibit C-8, by Human Rights Watch, published in October 2011 and detailing the impunity of the post-electoral crimes committed in Côte d'Ivoire. He found it unlikely that the authors of the report would have been able, in a three-month period, to meet with 176 survivors of abuses outlined in the report. This struck him as all the more implausible given that, in some cases, the use of interpreters was needed. However, as

the respondent pointed out, the report does not indicate the number of humanitarian workers who contributed to the investigation. In the absence of such information, the argument remains purely speculative and cannot be accepted.

[71] In short, the applicant has not persuaded me of the need to intervene in this case. This application for judicial review will therefore be dismissed.

[72] In the event of his application for judicial review being dismissed, the applicant asked that I certify the following question:

> [TRANSLATION]
>
> In spite of the serious unreliability, inconsistencies and blatant contradictions affecting the totality of the alleged facts of the offence, does an I.D. decision-maker have the authority to rely on them, essentially to conclude that they have been established and, consequently, that the alleged offence exists?

[73] The respondent objects to this, and with good reason. The proposed question is based on an assumption, that of [TRANSLATION] "serious unreliability, inconsistencies and blatant contradictions affecting the totality of the alleged facts of the offence", to which there can only be one response. However, as we have seen, that assumption has no factual basis in this case. Thus the question as worded does not lend itself to certification. Regardless of the wording of the question, I am of the view that no question for certification arises, given that this case does not, to my mind, raise any questions of general importance that transcend the particular facts and circumstances of this case.

JUDGMENT in IMM-5447-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;

2. No question is certified.

"René LeBlanc"
Judge

Certified true translation
This 23rd day of August, 2019.

Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

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