Federal Court  Cour fédérale

Date: 20210721

Docket: IMM-6885-19

Citation: 2021 FC 774

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 21, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

CARLES PUIGDEMONT CASAMAJO

Applicant

and

THE MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA

Respondent

ORDER AND REASONS

[1] By way of a motion filed under rule 109 of the *Federal Courts Rules*, SOR/98-106 [Rules], the Institut de recherche sur l'autodétermination des peuples et les indépendances nationales (Research Institute on Self-Determination of Peoples and National Independence) [IRAI] is seeking to intervene in this application for judicial review. The applicant in this case is seeking to have set aside a decision dated October 29, 2019, by a migration officer [Officer] at

the Canadian Embassy in France refusing his application for an electronic travel authorization [eTA]. The officer determined that he was not satisfied that the applicant was not inadmissible within the meaning of subsection 11(1.01) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] Only the respondent is challenging the motion to intervene. The applicant did not file any written submissions and did not attend the motion hearing.

[3] Under rule 109 of the Rules, a person wishing to intervene in a proceeding must explain how they wish to participate in the proceeding and how that participation will assist the determination of a factual or legal issue. The criteria to consider in a motion to intervene in order to determine whether an applicant's submissions will assist in making such a determination are set out in *Rothmans, Benson & Hedges Inc. v Canada (Attorney General)*, [1989] FCJ No 446 at paragraph 12 [*Rothmans*], affirmed by the Court of Appeal in [1989] FCJ No 707, and subsequently applied in the following decisions: *Canada (Attorney General) v Pictou Landing First Nation*, 2014 FCA 21, *Sport Maska Inc. v Bauer Hockey Corp.*, 2016 FCA 44, *Canada (Attorney General) v Kattenburg*, 2020 FCA 164 [*Kattenburg*], and *Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 13 [*Canadian Council for Refugees*]. The Honourable Mr. Justice David Stratas of the Federal Court of Appeal summarized these criteria as follows in *Canadian Council for Refugees*:

> I. The proposed intervener will make different and useful submissions, insights and perspectives that will further the Court's determination of the legal issues raised by the parties to the proceeding, not new issues. To determine usefulness, four questions need to be asked:

> (a) What issues have the parties raised?
>
> (b) What does the proposed intervener intend to submit concerning those issues?
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> (c) Are the proposed intervener's submissions doomed to fail?
>
> (d) Will the proposed intervener's arguable submissions assist the determination of the actual, real issues in the proceeding?
>
> II. The proposed intervener must have a genuine interest in the matter before the Court such that the Court can be assured that the proposed intervener has the necessary knowledge, skills and resources and will dedicate them to the matter before the Court;
>
> III. It is in the interests of justice that the intervention be permitted.
>
> (*Canadian Council for Refugees* at para 6).

[4] These criteria are flexible and not closed, and the Court has discretion to accord the weight it deems appropriate to each factor, in light of the facts, questions of law and the context of each case (*Canadian Council for Refugees* at para 7). As for the interests of justice criterion, Justice Stratas pointed out that a number of considerations have been developed that shed light on the meaning of this expression:

- Is the intervention consistent with the imperatives in Rule 3? For example, will the orderly progression or the schedule for the proceedings be unduly disrupted?
- Has the matter assumed such a public, important and complex dimension that the Court needs to be exposed to perspectives beyond those offered by the particular parties before the Court?
- Has the proposed intervener been involved in earlier proceedings in the matter? For example, if the Federal Court acceptably rules that a particular party should be admitted as an intervener, that ruling will be persuasive in this Court.

- Will the addition of multiple interveners create the reality or an appearance of an "inequality of arms" or imbalance on one side?

(*Canadian Council for Refugees* at para 9).

[5] With respect to the issue of the usefulness of the intervention, the IRAI is seeking leave to intervene in order to argue that the facts complained of by the Spanish state against the applicant, namely, the organizing of a [TRANSLATION] "separatist referendum", do not under Canadian law constitute offences that would amount to criminality or serious criminality. The IRAI submits that the Officer committed an unreasonable error by making an *a priori* determination, on a balance of probabilities, that the applicant might be inadmissible to Canada. The IRAI aims to show that in Canada, the non-criminalization of the legitimate right of peoples to self-determination is guaranteed under the Constitution and can be presumed from Canada's international commitments regarding civil and political rights.

[6] The respondent argues that the motion must be denied because the IRAI is seeking to expand the debate so as to encompass issues of politics and the lawfulness of the applicant's actions, issues that the Officer did not address. Rather, the Officer found that he was not satisfied that the applicant was not inadmissible given that he was facing criminal charges in Spain for which criminal proceedings are still under way. Having never received the documentation requested of the applicant, the Officer never started or completed the analysis of the equivalencies in Canada of the crimes with which the applicant was charged in Spain, namely rebellion, sedition, misappropriation of public funds and disobedience. The respondent contends that the Officer's decision was based on the applicant's failure to provide the documentation requested of him, which might have enabled the Officer to conclude that the applicant was not

inadmissible and to issue an eTA. In the absence of a decision on the equivalency of the provisions, the IRAI's argument is premature, and it is not for this Court to render judgment as to the consequences of the charges filed against the applicant. The respondent argues that it would be for an officer to perform such an analysis.

[7] The Officer's decision does indeed appear to be based on the applicant's failure to provide the documentation which would have allowed him to proceed with the equivalency exercise and determine whether the applicant was in fact inadmissible to Canada. In this regard, the Court notes that the Officer in his decision listed the various requests for documents made to the applicant as well as the responses received. The Officer also takes pains to emphasize the terms "documents that the officer reasonably requires" when referring to an applicant's obligations under subsection 16(1) of the IRPA to produce a visa and all documents that the officer reasonably requires. However, the applicant argues in his memorandum on judicial review that it was unreasonable for the Officer to require a single document when the information requested and sought was already in the documentary evidence adduced. The applicant submits that a number of those documents described the charges filed against him in Spain, provisions from the relevant Spanish legislation and possible sentences, and that the Officer had all of the relevant information on hand to be able to carry out a proper equivalency analysis.

[8] Although this argument suggests that the applicant and the respondent agree that the Officer did not conduct any such analysis of equivalency between the alleged crimes in Spain and Canadian criminal law, the applicant also submits in his memorandum on judicial review

that the Officer did not have reasonable grounds to believe that he had committed, outside Canada, an offence which, if committed in Canada, would constitute an offence under an Act of Parliament punishable by way of indictment or punishable in Canada by a maximum term of imprisonment of at least 10 years. The applicant alleges that the evidence before the Officer shows that the offences of rebellion and misappropriation of public funds cannot be held against him and that the only thing he could be accused of is having participated, as president of Catalonia, in the organization of the 2017 referendum on Catalonian independence. He submits that the charges brought against him by Spain are purely political and constitute a violation of his right to freedom of expression and peaceful assembly. He further argues that organizing and participating in an independence referendum is not an offence under an Act of Parliament in Canadian law and that there is no equivalent to the Spanish charges in Canadian law.

[9] Considering that the applicant argues that the Officer did not have reasonable grounds to believe that he could be inadmissible to Canada, the Court cannot conclude that the legal issues on which the IRAI wants to intervene are entirely new issues. However, in light of the record and the Officer's decision, the Court is not satisfied that any legal expertise the IRAI would bring to the table is necessary for the purposes of deciding whether the decision is reasonable.

[10] In *Kattenburg*, Justice Stratas explained that in order to determine whether a proposed intervention will be useful, the Court must understand its role in the proceeding. Indeed, "in the context of judicial review, often the Court is only in a reviewing role of the administrative decision-maker's decision on the merits and the administrative decision-maker is the only one entitled to decide on the merits" (*Kattenburg* at para 9). Should the judge find that the Officer

had enough information to analyse equivalency, the case would be referred to another officer for determination. It is unlikely that the judge would initiate this analysis without the Officer's prior guidance. Moreover, in such a scenario, it is indeed possible that the matter could come back before the Court once another officer has completed the equivalency analysis. It would then be open to the IRAI to bring its application to intervene at that time.

[11] Regarding the IRAI's interest in this case, the IRAI notes that the case plays out against the backdrop of Canada's legal obligations under domestic law and international commitments regarding civil and political rights, in particular the universal right of peoples to self-determination. The IRAI submits that, in light of its mission and its accomplishments, it has a genuine personal interest in the interpretation and advancement of the rules of law in this regard. It alleges that it has led legal and scientific fact-finding missions regarding the political conflict between Spain and Catalonia and is the only Canadian organization to have provided detailed scientific coverage of the trials of the top leaders of the Catalonian independence movement, held in 2019 before the Supreme Court of Spain in Madrid. The IRAI submits that this case could have significant ramifications in terms of the manner in which situations similar to that of the applicant will be handled in the future. It also alleges that it was granted leave to intervene in *Dostie et al c Procureur général du Canada*, 2021 QCCS 372 [*Dostie*]. The IRAI submits that its legal perspective is distinct from, but complementary to, the parties' representations.

[12] The IRAI also alleges that in the past, its chairman has had the chance to meet personally with the applicant and has developed a genuine feeling of human solidarity with him. In addition,

activities had been planned with the applicant in connection with the visit to Canada for which he sought an eTA.

[13] The respondent does not deny that the IRAI has the knowledge, skills and resources necessary to mount a proper intervention. However, in the respondent's view, the IRAI does not have the required interest to intervene. He claims that the IRAI's expertise in the right to self-determination and in the conflict between Spain and Catalonia is unlikely to provide any guidance in the debate regarding the sufficiency of the documentation before the Officer. As for the IRAI's intervention in *Dostie*, the respondent notes that the application for voluntary intervention for conservatory purposes was dismissed because the case did not affect the IRAI's own rights, and that the application was only allowed on the basis of an intervention as a friend of the court.

[14] The criterion for determining whether a proposed intervener has a genuine interest was not further defined in *Canadian Council for Refugees*. In *Rothmans*, the test was articulated as follows: "Is the proposed intervenor directly affected by the outcome?" (*Rothmans* at para 12). It is common ground that the IRAI has the knowledge and skills regarding the universal right of peoples to self-determination and the conflict between Spain and Catalonia. A finding concerning whether the crimes of which the applicant stands accused in Spain have equivalents in Canadian law could affect the IRAI's future research. However, since the Court finds that it is unlikely that the trial judge will initiate an equivalency analysis without first referring the matter back to another officer, the Court is not satisfied that the IRAI has a sufficient interest to justify its intervention in the case before the Court. Moreover, the fact that the IRAI's chairman knows

the applicant personally is not enough to conclude that the IRAI has a genuine interest in the outcome of the matter.

[15] Regarding the final criterion to consider, namely, whether it is in the interests of justice that the intervention be permitted, the Court acknowledges that the case has a public dimension owing to the fact that the applicant is a well-known person. It also acknowledges that the IRAI's intervention should not unduly delay the proceeding's conduct. This does not, however, justify the intervention. The issues raised in the application for judicial review are not so complex as to require the Court to be exposed to perspectives other than those of the parties to the proceeding. First and foremost, the Court will have to decide whether the Officer's decision is unreasonable.

[16] In addition, the Court is not persuaded that the observations proposed by the IRAI are so distinct that the applicant is unable to make the relevant arguments on judicial review. Indeed, in his memorandum on judicial review, the applicant makes similar arguments to those proposed by the IRAI here.

[17] Accordingly, the Court finds that the IRAI has not shown how its participation will assist in the determination of the issues. The motion to intervene is therefore dismissed.

ORDER in IMM-6885-19

THIS COURT ORDERS as follows:

1. The motion to intervene brought by the Institut de recherche sur l'autodétermination des peuples et les indépendances nationales (IRAI) is dismissed.

"Sylvie E. Roussel"
Judge

Certified true translation
Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6885-19
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