Federal Court  Cour fédérale

Date: 20100122

Docket: IMM-2777-09

Citation: 2010 FC 71

Ottawa, Ontario, January 22, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

KHOKON ISLAM

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Khokon Islam seeks judicial review of a decision of a member of the Refugee Protection Division of the Immigration and Refugee Board of Canada (the tribunal). This application is submitted under subsection 72(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the Act). The tribunal concluded that pursuant to section 98 of the Act the applicant was neither a refugee nor a person in need of protection because there were serious reasons to believe that he had been guilty of acts contrary to the purposes and principles of the United Nations.

* * * * * * * *

[2] The applicant, a citizen of Bangladesh, was born in the District of Noakhali.

[3] Before leaving for Canada, he was a businessman and was actively involved in politics. In May 1996, he became a member of a political party, the Awami League (“AL”). He participated in the 1996 electoral campaign, which was won by the AL, as well as in the 2001 elections, which it lost.

[4] According to the documentary evidence analyzed by the tribunal, the AL, like the other political parties in Bangladesh, often uses violence in its political activities. The tribunal noted that when the party was in power, its members violently disrupted strikes initiated by the opposition and, in at least one case, even participated in the murder of an opposition activist. In general, violence, including murder, is very often associated with political activity in Bangladesh, whether at meetings, demonstrations or during strikes. Violence is also prevalent in the youth wings of political parties, including that of the AL, which were responsible for a good number of attacks against journalists. The government formed by the AL, including the Prime Minister, encouraged this violence. Elections are also regularly characterized by abuse, intimidation and violence.

[5] In addition to directly participating in political violence, parties, including the AL, use the police for this purpose when they form the government. The documentary evidence shows that political persons in charge order the police to attack and even murder members of the opposition,

and the police regularly engage in torture. It is established that this was the case when the AL formed the government from 1996 to 2001.

[6] In his Personal Information Form (“PIF”), the applicant declared having been very active in the AL. Letters from other party officials confirmed this. In January 1998, the applicant became a member of the executive council of the local chapter of the AL. In January 2001 he became Secretary for Youth and Sports. In this capacity he was in charge of relations between the local chapter of the party and its youth wing. In January 2004 he became a Public Relations Secretary for the local chapter of the party. He directed protest demonstrations against the government in power since 2001 and made vehement anti-government speeches at public meetings.

[7] Fearing the police and government, he left Bangladesh in 2005 and made a claim for refugee protection in Canada.

[8] On June 23, 2006, the Refugee Protection Division (RPD) sent a letter to the Canada Border Services Agency (“CBSA”) notifying it that the issue of exclusion under section 98 of the Act could arise in the applicant’s case, as there were serious reasons to believe that he was guilty of crimes against humanity or of acts contrary to the purposes and principles of the United Nations. The letter referred to the decision of this Court in *Chowdhury v. Minister of Citizenship and Immigration*, 2006 FC 139 [*Chowdhury 2006*], in which Justice Simon Noël had upheld a decision of the RPD concluding that section 98 of the Act applied to the applicant, a local leader

of the AL. A copy of this letter was sent to Robert Proulx, the immigration consultant acting for the applicant.

[9] The CBSA convened the applicant to an interview, which was held on July 20, 2006, to collect additional information about his application.

[10] On July 24, 2006, the Minister of Public Safety and Emergency Preparedness filed a notice of intervention, advising the RPD and the applicant (through his immigration consultant) of his intention to submit that the applicant was possibly an accomplice to war crimes, crimes against humanity or acts contrary to the purposes and principles of the United Nations.

* * * * * * * *

[11] The Minister of Public Safety and Emergency Preparedness intervened before the tribunal, submitting that section 98 of the Act applied to the applicant as there were serious reasons to believe that he had committed crimes against humanity or that he had acted contrary to the purposes and principles of the United Nations. The tribunal did not analyze the issue of crimes against humanity. The decision strictly concerns acts contrary to the purposes and principles of the United Nations. The tribunal concluded that there were serious reasons to believe that the applicant was guilty because of his complicity with the AL. He was accordingly excluded from the category of refugees and persons in need of protection.

[12] First, the tribunal concluded that the AL was guilty of acts which were contrary to the purposes and principles of the United Nations. To do so, it first analyzed the documentary evidence concerning the AL's involvement in political violence. It then concluded that at least some of the violence for which the AL was responsible before, during and following its term in office, was contrary to the purposes and principles of the United Nations, within the meaning given to this expression by the Supreme Court of Canada in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, 160 D.L.R. (4th) 193. The AL was responsible for torture and brutal attacks against demonstrators, including murder, thereby infringing the *Universal Declaration of Human Rights* or the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. In addition, the tribunal held that calls to violence against journalists and to murder by the Prime Minister and leader of the AL were also actions contrary to the purposes and principles of the United Nations.

[13] Referring to *Pushpanathan*, the tribunal noted that "international jurisprudence" did not approve the recommendation at paragraph 163 of the *Handbook on Procedures and Criteria for Determining Refugee Status* ("Handbook") to restrict the category of persons guilty of acts contrary to the purposes and principles of the United Nations to those who ". . . must have been in a position of power in a Member State and instrumental to his State's infringing these principles."

[14] Second, the tribunal concluded that because of his association with the AL, the applicant was an accomplice to the acts committed by it that were contrary to the purposes and principles of the United Nations. The tribunal noted that the AL was not ". . . principally directed to a

limited brutal purpose" in which mere membership may "by necessity involve personal and knowing participation in persecutorial acts" (*Ramirez v. Canada (Minister of Employment and Immigration)*, [1992] 2 F.C. 306, at page 317 (F.C.A.)). The tribunal therefore examined the case law on complicity and applied the test developed by the Federal Court of Appeal in *Sivakumar v. Canada (Minister of Citizenship and Immigration)*, [1994] 1 F.C. 433, and summarized by Justice Michel Shore in *Ryivuze v. Minister of Citizenship and Immigration*, 2007 FC 134, at paragraph 38, to determine whether or not the applicant in addition to his membership in the AL, was truly an accomplice in the actions committed by this party.

[15] The factors developed by case law and applied by the tribunal are the following: (1) the nature of the organization; (2) the method of recruitment; (3) position/rank in the organization; (4) knowledge of the organization's atrocities; (5) the length of time in the organization and (6) the opportunity to leave the organization.

[16] The tribunal noted that the AL was not an organization devoted strictly to violence.

[17] However, it noted that the applicant had joined the party willingly and that he had progressed from the rank of a mere member to that of an "important leader". The tribunal rejected the applicant's submission to the effect that his involvement was local and limited. It noted that in his narrative of the events leading up to his flight, the applicant emphasized the extent of his political involvement and the role he held, and that he had begun to minimize it only when he was facing the possibility of being excluded from the category of potential refugees because of this involvement. The tribunal believed the applicant's initial version and not

his subsequent one. On the other hand, the tribunal noted that it was often local and not national leaders who were responsible for atrocities committed by the AL. According to the tribunal, ". . . [t]his is the essence of complicity by association."

[18] Regarding the knowledge the applicant had of the actions of the AL, the tribunal ruled that the applicant's statements that he had no knowledge of anything and that in his district the AL had never committed any infringements of human rights were found not to be credible. The tribunal basically considered it implausible that the applicant had no knowledge of the abuses committed by the AL, its members and directors was implausible. According to the documentary evidence, information about these abuses was published in a large number of newspapers. (The tribunal's detailed findings are at paragraphs 45 to 54 of its decision.) The tribunal noted among other things that the applicant's district of origin was next to the district of Chittagong, where the AL's abuses were especially violent and systematic. The tribunal made a distinction between the applicant's file and the case at the basis of this Court's decision in *Chowdhury v. Minister of Citizenship and Immigration*, 2003 FC 744, 235 F.T.R. 271, in which Mr. Justice Edmond Blanchard had concluded at paragraph 39 that "Indeed the evidence supports that only a minority [of the members of AL] are involved with violence and such acts." In this case, according to the IRB "voluminous documentary evidence from reliable sources was produced, showing that it is not a minority of Awami League members that are involved in violence . . . ; violence is a common feature in politics, among all parties." The applicant himself admitted that all parties "did practice violent actions." The tribunal considered this an admission by the applicant that "violence was occurring within the Awami League members (*sic*) and could possibly occur in the course of his own activism."

[19] On the other hand, the tribunal found that the applicant spent a considerable amount of time on his activities in the AL, as he had devoted some 15 to 20 hours a week for nine years.

[20] Finally, the applicant never left the AL and never dissociated himself from it, even though his departure for Canada ended his active involvement. Although his position within the organization gave him opportunities to make his opinions heard, he never opposed the abuses committed by the party. Far from having tried to stop them, he actively supported the organization.

[21] The tribunal underlined the role played by local leaders of all political parties in the violence that characterizes political life in Bangladesh. It concluded that the applicant was one of those of whom the Supreme Court of Canada said at paragraph 63 of *Pushpanathan*, above, that "[t]he rationale is that those who are responsible for the persecution which creates refugees should not enjoy the benefits of a Convention designed to protect those refugees".

* * * * * * * *

[22] The following provisions of the Act are relevant in this case:

3. (3) This Act is to be construed and applied in a manner that … (*f*) complies with international human rights instruments to which Canada is signatory.	**3.** (3) L'interprétation et la mise en œuvre de la présente loi doivent avoir pour effet : … *f*) de se conformer aux instruments internationaux portant sur les droits de l'homme dont le Canada est signataire.

98. A person referred to in section E or F of Article 1 of the Refugee Convention is not a Convention refugee or a person in need of protection.

98. La personne visée aux sections E ou F de l'article premier de la Convention sur les réfugiés ne peut avoir la qualité de réfugié ni de personne à protéger.

SCHEDULE

(Subsection 2(1))

SECTIONS E AND F OF ARTICLE 1 OF THE UNITED NATIONS CONVENTION RELATING TO THE STATUS OF REFUGEES

…

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

…

(*c*) he has been guilty of acts contrary to the purposes and principles of the United Nations.

ANNEXE

(paragraphe 2(1))

SECTIONS E ET F DE L'ARTICLE PREMIER DE LA CONVENTION DES NATIONS UNIES RELATIVE AU STATUT DES RÉFUGIÉS

…

F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de penser :

…

c) Qu'elles se sont rendues coupables d'agissements contraires aux buts et aux principes des Nations Unies.

[23] In addition, the applicant invoked the following provisions of the *Immigration and Refugee Protection Regulations*, SOR/2002-227:

14. For the purpose of determining whether a foreign national or permanent resident is inadmissible under paragraph 34(1)(*c*) of the Act, if either the following determination or decision has been rendered, the findings of fact set out in that determination or decision shall be considered as conclusive findings of fact:

(*a*) a determination by the Board, based on findings that the foreign national or permanent resident has engaged in terrorism, that the foreign national or permanent resident is a person referred to in section F of Article 1 of the Refugee Convention; or

…

14. Les décisions ci-après ont, quant aux faits, force de chose jugée pour le constat de l'interdiction de territoire d'un étranger ou d'un résident permanent au titre de l'alinéa 34(1)*c*) de la Loi :

a) toute décision de la Commission, fondée sur les conclusions que l'intéressé a participé à des actes terroristes, qu'il est visé par la section F de l'article premier de la Convention sur les réfugiés;

…

15. For the purpose of determining whether a foreign national or permanent resident is inadmissible under paragraph 35(1)(*a*) of the Act, if any of the following decisions or the following determination has been rendered, the findings of fact set out in that decision or determination shall be considered as conclusive findings of fact:

…

(*b*) a determination by the Board, based on findings that the foreign national or permanent resident has committed a war crime or a crime against humanity, that the foreign national or permanent resident is a person referred to in section F of Article 1 of the Refugee Convention; or

…

15. Les décisions ci-après ont, quant aux faits, force de chose jugée pour le constat de l'interdiction de territoire d'un étranger ou d'un résident permanent au titre de l'alinéa 35(1)*a*) de la Loi :

…

b) toute décision de la Commission, fondée sur les conclusions que l'intéressé a commis un crime de guerre ou un crime contre l'humanité, qu'il est visé par la section F de l'article premier de la Convention sur les réfugiés;

…

[24] The following provisions of the *Refugee Protection Division Rules*, SOR/2002-228, are also relevant:

18. Before using any information or opinion that is within its specialized knowledge, the Division must notify the claimant or protected person, and the Minister if the Minister is present at the hearing, and give them a chance to

(*a*) make representations on the reliability and use of the information or opinion; and

(*b*) give evidence in support of their representations.

18. Avant d'utiliser un renseignement ou une opinion qui est du ressort de sa spécialisation, la Section en avise le demandeur d'asile ou la personne protégée et le ministre — si celui-ci est présent à l'audience — et leur donne la possibilité de :

a) faire des observations sur la fiabilité et l'utilisation du renseignement ou de l'opinion;

b) fournir des éléments de preuve à l'appui de leurs observations.

23. (1) If the Division believes, before a hearing begins, that there is a possibility that sections E or F of Article 1 of the Refugee Convention applies to the claim,

23. (1) Si elle croit, avant l'audience, qu'il y a une possibilité que les sections E ou F de l'article premier de la Convention sur les réfugiés s'appliquent à la demande

the Division must notify the Minister in writing and provide any relevant information to the Minister.

…

(3) The Division must provide to the claimant a copy of any notice or information provided to the Minister.

d'asile, la Section en avise par écrit le ministre et lui transmet les renseignements pertinents.

…

(3) La Section transmet au demandeur d'asile une copie de tout avis et renseignement transmis au ministre.

[25] Finally, the following provision of the *Canadian Bill of Rights,* S.C. 1960, c. 44, is also relevant:

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

…

(*d*) authorize a court, tribunal, commission, board or other authority to compel a person to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards;

2. Toute loi du Canada, à moins qu'une loi du Parlement du Canada ne déclare expressément qu'elle s'appliquera nonobstant la *Déclaration canadienne des droits*, doit s'interpréter et s'appliquer de manière à ne pas supprimer, restreindre ou enfreindre l'un quelconque des droits ou des libertés reconnus et déclarés aux présentes, ni à en autoriser la suppression, la diminution ou la transgression, et en particulier, nulle loi du Canada ne doit s'interpréter ni s'appliquer comme

…

d) autorisant une cour, un tribunal, une commission, un office, un conseil ou une autre autorité à contraindre une personne à témoigner si on lui refuse le secours d'un avocat, la protection contre son propre témoignage ou l'exercice de toute garantie d'ordre constitutionnel;

* * * * * * * *

[26] This application for judicial review raises the following issues:

1) Did the tribunal act fairly

a) by admitting in evidence the applicant's interview with the CBSA and by basing its decision on this interview;

b) by not disclosing to the applicant the answers he gave at this interview; or

c) by being partial?

2) Did the tribunal err in analyzing the application of section 98 of the Act without having analyzed the application of sections 96 and 97?

3) Did the tribunal err by concluding that section 98 of the Act applied to the applicant?

* * * * * * * *

[27] The first issue concerns procedural fairness. The Court will intervene if the applicant's rights on this point were not respected. The second issue is a question of law, and the standard of review of correctness applies. The third issue concerns the tribunal's application of the law regarding section 98 to the facts of the case and must therefore be decided on the basis of the standard of reasonableness (see for example *Ryivuze*, above, at paragraph 15 and *Chowdhury 2006*, above, at paragraph 13).

I. Procedural Fairness

A. *Admission in evidence of the applicant's interview with the CBSA*

[28] As far as the lack of a notice to the applicant's consultant is concerned, it is up to the applicant to prove it because he has alleged this fact and has claimed that it is an infringement of his procedural rights. In his affidavit, however, he only affirmed that he "did not have the possibility to have a lawyer at this time". This sentence is vague but I do not see how it establishes on a balance of probabilities that the applicant's consultant was not advised. In any event, the evidence shows that a copy of the letter from the RPD to the CBSA had been sent to the applicant's consultant, and he was therefore aware of a possible intervention by the CBSA in this file. In addition, the applicant did not object to the interview being conducted in the absence of his consultant or an attorney. He said nothing when he was asked if he had any questions at the beginning of the interview. I therefore find that the applicant's rights were not infringed.

[29] The fact that the applicant was not specifically warned that the information supplied at the interview could be used in the analysis of his file is also not an infringement of procedural fairness. It was explained to the applicant that the purpose of the interview was "to look for much more details [*sic*] than your Personal Information Form". It is difficult for me to believe that he could have imagined that he was being met out of mere curiosity.

[30] In addition, procedural fairness did not require that the tribunal mention the letter at the hearing. It had no evidentiary value and had strictly nothing to do with the tribunal's specialized

knowledge. In any event, the applicant cannot claim that he was taken by surprise by this letter because his consultant had received a copy.

[31] Finally, as was explained by Justice Le Dain of the Federal Court of Appeal in *Ziegler v. Hunter (Combines Investigation Act, Director of Investigation and Research)*, [1984] 2 F.C. 608, paragraph 2(*d*) of the *Canadian Bill of Rights* ". . . contemplates that a person may be compelled to give evidence which may tend to incriminate him, so that the protection referred to can only be protection against the use of his evidence against him in subsequent criminal proceedings." It is not necessary to underline the fact that Justice Marceau's opinion was also to the same effect. The applicant's argument based on this provision must therefore be dismissed.

B. *Lack of Disclosure*

[32] As was underlined by the respondent, the transcript of the hearing confirms that the tribunal had invited the applicant to show the mistakes in the record of his interview with the CBSA (see the Tribunal Record at page 900). However, the applicant could show only one error, and he requested permission to examine the record to see if there were any others. This request was refused by the tribunal. In my opinion this was not an omission to disclose evidence to the applicant. This evidence was available to him before the hearing, and, as the tribunal noted, it was under no obligation during the hearing to remedy the applicant's lack of preparation. The same thing applies to the documentary evidence. I also agree with the respondent that, as was explained by the Federal Court of Appeal in *Szczecka c. Canada (M.E.I.)* (1993), 116 D.L.R. (4th) 333, the tribunal was not required to translate the record for the applicant.

C. *The Tribunal's Alleged Partiality*

[33] The applicant's allegations on this point are unfounded. First, the RPD respected a regulatory requirement by sending the letter concerning the applicant's record to the CBSA, and the person who wrote that letter was not the same one who subsequently processed the applicant's file. The applicant did not allege that the RPD was not independent but when mentioning partiality he referred to the tribunal's mindset, which had nothing to do with the sending of the letter in question. Moreover, the letter merely mentioned that "an issue of exclusion under section F(c) of Article 1 of the Refugee Convention may arise in the present case" (Tribunal Record, page 91; emphasis added). Stating that an issue arises is not prejudging the answer that will be given. Then, as was underlined by the respondent, the fact that the AL committed abuses when it was in power is not really contested. The issues in this case were to determine whether these abuses could be described as being contrary to the principles and purposes of the United Nations and, if so, whether the applicant could be held responsible. The applicant is challenging the following question put by the tribunal: "You are a member of the party that when was in power committed serious human rights violations, and the questions are there to see how much you knew about it and what you knew about it. Do you understand?" Finally, the fact that the tribunal did not interpret the evidence submitted by the applicant the way he hoped does not in any way establish that it acted in bad faith.

II. Order of Application of Sections 96, 97 and 98 of the Act

[34] As the Federal Court of Appeal explained in *Fernandopulle v. Minister of Citizenship and Immigration*, 2005 FCA 91, at paragraph 17, "However, the Handbook is not law. It cannot be treated as more than a guide." This Court is bound not by the recommendations in the Handbook

but by the Court of Appeal's case-law, according to which the tribunal not only was not required to rule on the possibility that the applicant was a refugee or a person in need of protection, but in fact could not do so without exceeding its jurisdiction (see *Xie v. Canada (Minister of Citizenship and Immigration)*, [2005] 1 F.C.R. 304 (C.A.), at paragraph 38).

[35] In any event, I do not see how, even if the tribunal had examined the file on the basis of sections 96 and 97 of the Act before dealing with section 98, its conclusion could have been any different. No matter how serious the consequences of the tribunal's decision may be (and I note that the provisions invoked by the applicant do not apply to his case because the tribunal did not conclude that he had committed a terrorist act, a war crime or a crime against humanity), that decision would have been the same.

III. Application of Section 98 of the Act to the Applicant

[36] The Supreme Court of Canada has defined the meaning of the expression "acts contrary to the purposes and principles of the United Nations" in *Pushpanathan*, above, at paragraph 65. This expression covers acts about which ". . . there is consensus in international law that particular acts constitute sufficiently serious and sustained violations of fundamental human rights as to amount to persecution, or are explicitly recognized as contrary to the purposes and principles of the United Nations . . .". The Supreme Court also ruled at paragraph 68 that a person who did not hold power in a State may nevertheless be held responsible for such acts in spite of a contrary opinion expressed in the Handbook.

[37] Invoking the Handbook, the applicant pleaded for a narrower definition of the notion of acts contrary to the purposes and principles of the United Nations and submitted that only members of governments may be held liable. However, just as with the relationship between sections 96, 97 and 98 of the Act, this Court is bound by Canadian case-law and not by the Handbook. The applicant also alleged that *Pushpanathan* no longer applies because the relevant legislation has changed. However, the concept of exclusion provided by the Convention is part of the new Act, as it was with the former *Immigration Act*, and nothing warrants a different interpretation.

[38] In my opinion, the tribunal's finding that the AL had committed acts that were contrary to the purposes and principles of the United Nations is reasonable. The tribunal studied the evidence carefully. It noted the involvement of party members and of its leaders at various levels in political violence and sometimes murder. It also noted that the AL (like the other parties) used the police for its political purposes, to intimidate and even to eliminate opponents. In such a context, it is reasonable not to distinguish the political party and the government on which it is based because the government operates for the benefit of the party. In any event, the tribunal concluded that the AL and its associated organizations were directly involved in the infringement of human rights and used government institutions for that purpose. The tribunal was entitled to conclude that the AL was guilty of ". . . serious, sustained or systemic violations of fundamental human rights which amount to persecution . . ." (*Pushpanathan*, above, at paragraph 64) and therefore of acts contrary to the purposes and principles of the United Nations.

[39] The applicant's arguments to the effect that in spite of his membership in the AL, he cannot be held liable for these acts cannot be allowed. By submitting that because there is no evidence of his personal involvement in specific infringements of human rights he cannot be held liable for those committed by the AL, the applicant is once again inviting the Court to ignore the case-law. However, the case-law is clear. A person who willingly associates with another person or an organization guilty of acts contrary to the purposes and principles of the United Nations becomes an accomplice and shares the guilt. Personal involvement in specific infringements of human rights is not necessary; otherwise, the objective of ensuring that ". . . those who are responsible for the persecution which creates refugees should not enjoy the benefits of a Convention designed to protect those refugees" (*Pushpanathan*, at paragraph 63) would not be fully attained.

[40] The tribunal identified and applied this case-law, including the test developed by the Federal Court of Appeal in *Sivakumar*, above, and summarized in *Ryivuze*, above. In doing so the tribunal took into consideration the nature of the AL, the method of recruitment of the applicant, his positions within the organization, the knowledge he had of the organization's atrocities, the length of time of his involvement and the opportunity he had to leave the organization. Once this is done, all this Court has to do is to ensure that the decision is justified, transparent and intelligible (see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paragraph 47).

[41] The applicant's arguments basically concern the knowledge he had of the AL's actions. In my opinion, the tribunal's conclusions on this point are reasonable. The tribunal noted that

political violence was frequent in Bangladesh, was used by all political parties and by the police at the request of the party in power and that the press covered this regularly. On the basis of these facts, the tribunal could reasonably infer that the applicant must have known that the AL was responsible for systematic infringements of human rights. The fact that there is no evidence about the applicant's district is of no importance because the documentary evidence shows that these infringements were committed throughout the country.

[42] The applicant's arguments to the effect that he was entitled under the *Universal Declaration of Human Rights* to participate in the political life of his country, that the goal of taking and exercising political power which he pursued within the AL was not illegitimate and the tribunal could not "require" that he leave the party must also be dismissed. The right to take part in the government of his country cannot include the right to intimidate his political opponents and even less so to use violence against them. However, this is what the AL systematically did. The tribunal reasonably concluded that the applicant could not have been unaware of this. Having joined the party and having remained an active member for nine years, the applicant chose to be part of a system based on brutality and the denial of the rights of his opponents. It was only when this system turned against him that the applicant apparently discovered the value of the rights protected by the *Universal Declaration*.

* * * * * * * *

[43] For these reasons, the application for judicial review is dismissed.

[44] After having argued that to come within the ambit of article 1F(*c*) of the *United Nations Convention Relating to the Status of Refugees* a person must be guilty of acts contrary to the purposes and principles of the United Nations when he was participating in the exercise of power within a State and contributed to the infringement of these purposes and principles by this State, counsel for the applicant proposed the certification of the following question:

> [TRANSLATION]
>
> Was the scope given by the tribunal to article 1F(*c*) of the *1951 Convention Relating to the Status of Refugees* and the *1967 Protocol Relating to the Status of Refugees* regarding the acts and the persons included in this provision as it was expressed in *Pushpanathan v. Canada (M.C.I.)* 1998 1 S.C.R., especially at paragraphs 65 to 70, consistent with:
>
> (i) The interpretation of international law as expressed by the UNHCR in its "*Background Note on the Application of Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees*" of September 4, 2003;
>
> (ii) Did the tribunal accordingly err in law by not taking into consideration or by derogating from the UNHCR's interpretation on this point and by replacing it with the criteria in *Pushpanathan*, taking into consideration the fact that subsection 3(3) of the IRPA now requires that this Act be construed and applied in a manner that:
>
> > (*f*) complies with international human rights instruments to which Canada is signatory.

[45] The applicant's counsel invoked a 2003 *Information Note* from the High Commissariat to convince the Court to certify a question, which, according to counsel for the respondent, would allow him to [TRANSLATION] "appeal to the Federal Court of Appeal and finally to the Supreme

Court of Canada, which could then revise its opinion stated at paragraph 68 of its reasons in the 1998 judgment of *Pushpanathan,*" above.

[46] However, in a document entitled *UNHCR Statement on Article 1F of the 1951 Convention,* dated July 2009, at pages 29 and 30, which was referred to by counsel for the respondent, the same United Nations High Commissariat stated the following:

> Based on the above considerations and in light of today's reality, the commission of crimes which, because of their nature and gravity, are capable of affecting international peace and security, or the relations between States, or which constitute serious and sustained violations of human rights, may not in all cases require the holding of a position of authority within a State or State-like entity. Thus, in addition to persons in positions of State authority, individuals acting in a personal capacity, including as leaders of a group responsible for "acts of terrorism" which are contrary to the principles and purpose(s) of the United Nations, could also be capable of falling under Article 1F(*c*), where they are found to possess individual responsibility based on the requisite tests …
>
> . . .
>
> Various Member States, namely Belgium, . . . Czech Republic, . . . Slovak Republic, Spain and Sweden have limited the application of Article 1F(*c*) of the 1951 Convention to persons exercising a leadership role or holding a position of authority within a State. Moreover, prevalent Member State practice accords particular weight to the "individual responsibility" requirement, holding that mere membership in a terrorist organization is not enough to bring the person concerned within the exclusion clauses. In the UK, by contrast, the asylum authorities and courts have concluded in a number of cases that a person who is not acting on behalf of a State can commit an act contrary to the purposes and principles of the United Nations, and that Article 1F(*c*) can apply. (Note #148: *KK (Article 1F(c) Turkey) v. Secretary of State for the Home Department* [2004] UKIAT 00101 cites UNSCR 1377 and refers to the UN Security Council's "unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by *whomever* committed". This position has been approved recently by the Court of Appeal in *Al-*

> *Sirri v. Secretary of State for the Home Department* [2009] EWCA Civ 222, which refers to the Supreme Court of Canada's decision in *Pushpanathan v. Canada* …
>
> (Emphasis added.)

[47] Considering that the opinion of the United Nations High Commissariat on the issue of who may be considered to infringe the purposes and principles of the United Nations is now identical to the Supreme Court's ruling in *Pushpanathan*, above, at paragraph 68, I agree with counsel for the respondent that the question proposed by counsel for the applicant cannot be certified.

JUDGMENT

The application for the judicial review of the decision of May 8, 2009, by a member of the Refugee Protection Division of the Immigration and Refugee Board is dismissed.

"Yvon Pinard"
Judge

Certified true translation
Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-2777-09
STYLE OF CAUSE:	KHOKON ISLAM v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	January 14, 2010
REASONS FOR JUDGMENT AND JUDGMENT:	Pinard J.
DATED:	January 22, 2010

SOLICITORS OF RECORD:

Michel Le Brun	FOR THE APPLICANT
Normand Lemyre	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Michel Le Brun LaSalle, Quebec	FOR THE APPLICANT
John H. Sims, Q.C. Deputy Attorney General of Canada	FOR THE DEFENDANT