

CANADA / JUDGMENT

Konaté v. Canada (Public Safety)

2024 FC 1018

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Docket: IMM-9192-22 Citation: 2024 FC 1018 [ENGLISH TRANSLATION] Ottawa, Ontario, July 22,
2024 PRESENT: Madam Justice Azmudeh BETWEEN: MAMADOU KONATÉ Applicant and THE
MINISTER OF PUBLIC SAFETY Respondent JUDGMENT AND REASONS I. Overview

- [1] This is an application for judicial review under subsection 72(1) of the Immigration and Refugee Protection Act, SC 2001, c 27 (“IRPA”), of a September 20, 2022 decision (“Decision”) by an officer (“Officer”) of the Canada Border Services Agency (“CBSA”) refusing the applicant’s request for deferral of their removal. II. Facts and procedural history of the case
- [2] The applicant arrived in Canada on February 2, 2016 and claimed refugee protection under sections 96 and 97 of the IRPA. Following his arrival, the applicant was found inadmissible by the Immigration Division under paragraphs 34(1)(b) and (f) of the IRPA. On May 15, 2018, an initial pre-removal risk assessment (“PRRA”) application was rejected and his removal was set by the CBSA for July 9, 2018.
- [3] In the years that followed, multiple proceedings were filed before the applicant’s request for deferral of his deportation was rejected by the CBSA on September 20, 2022. That decision is the subject of the judicial review that is before the Court today.
- [4] After obtaining a personal expert report from Hervey Delmas Kokou, Executive Director of Amnesty International Côte d’Ivoire (the “Report”), the applicant filed a second PRRA application as well as an application for a stay of his removal.
- [5] The following is a summary of the facts that were before the Officer: ·The applicant had been a member of the Patriotic Movement of Côte d’Ivoire since 2002. This movement joined the country’s official armed forces and became the Forces Nouvelles in 2011, following the coming to power of President Alassane Ouattara. In August 2011, the applicant returned to Côte d’Ivoire. In October 2014, a former colleague warned him that Lieutenant Colonel Morou still wanted him gone. As a result, the applicant permanently left the country and headed for the United States on May 4, 2015. Today, the applicant says he is still being threatened by Lieutenant Colonel Morou. ·Despite his exile, the applicant remained

interested and involved in Ivorian politics and supported former Prime Minister Guillaume Soro in the 2020 elections. Guillaume Soro is now Alassane Ouattara's major rival. The applicant supports Guillaume Soro's policies by attending various political events in person in Montréal or through his social media, where he publicly supports the positions taken by this politician through his Facebook account, "Marivell KONA". The applicant also openly produces publications against Alassane Ouattara. Guillaume Soro, who served as prime minister following the Ouagadougou Agreement in 2007, helped Alassane Ouattara take power from Laurent Gbagbo in 2010. However, their relationship deteriorated from 2016 onward. In 2017, Guillaume Soro was accused of participating in mutinies and, in February 2019, he resigned as speaker of the National Assembly, because he disagreed with the way Alassane Ouattara held power. After these events, the applicant continued to support Guillaume Soro and opposed Alassane Ouattara's government, which, according to the applicant, is responsible for the violence in Côte d'Ivoire. The applicant maintained his activism on social media as well as through pro-Soro rallies in Montréal. The applicant produced a 12-page report dated September 9, 2022 by Hervey Delmas Kokou, Executive Director of Amnesty International Côte d'Ivoire, entitled [translation] "Questions on the personalized risks for Mamadou Konaté if he were to return to Côte d'Ivoire" ("Report").

- [6] The Report provides a summary of what the applicant should expect upon returning to Côte d'Ivoire. At the very least, the Report concluded that because of his past political activities and associations, his current support for Guillaume Soro, and his long absence from the country, the applicant is at risk of being arrested upon arrival. The Report explains why the applicant's profile is relevant.
- [7] In a passage that both parties referred to at the judicial review hearing, the Report states that since 2011, Amnesty International has recorded hundreds of arrests of returnees, some simply because they supported Alassane's rival: [translation] Since 2011, we at Amnesty International have recorded around 100 people arrested after returning from exile. These people are civilians, but just because they had supported President Laurent Gbagbo, for example, against Alassane Ouattara, they were arrested. There are numerous cases. For example, take the case of Minister Hubert Oulaye, former Minister of Public Service under Gbagbo, who took refuge in Ghana in 2010 after the crisis. When he returned from exile in 2015, he was arrested six months later, in May 2015, and tried in June 2017 and sentenced to 20 years in prison. There is also the case of former Minister Assoa Adou, who returned from exile in December 2014. He was arrested in January 2015 for breach of state security, and this 74-year-old man was sentenced to 10 years in prison.
- [8] The Report goes on to talk about the limitations imposed on supporters of Guillaume Soro, who is in Mali and who the authorities fear will carry out a coup d'état. The Report indicates that the situation was more tense at the time of writing than it was in 2018–2020, and that the applicant would be an easy target for the authorities.

- [9] The Report also states that the applicant's global media story would put him at risk of arrest, detention and torture.
- [10] Indeed, for the most part, the Officer's comments on the personalized political risk expert Report say nothing more than that the applicant does not have the profile of the cases reported by the expert in his Report and that he is not at risk. However, as submitted below, this directly contradicts what the expert states in his Report. I will start with what the Officer says in his decision: [translation] You cited a report on the personalized risk for your client. In this document, Mr. KOKOU mentions that, since 2011, Amnesty International has recorded about 100 people arrested after they returned. He reports cases involving the arrest, detention, trial and sentencing of high-ranking persons in 2014 and 2015. Based on your client's record and this deferral request, your client does not appear to have the profile of the cases reported by Mr. KOKOU.
- [11] On September 30, 2022, this Court ordered a stay of removal until this application was heard. In ordering the stay, my colleague Justice Gleeson assessed the "arguable case" test based on the higher standard set out in Wang, namely the likelihood of success on the underlying application for judicial review, which I heard. III. Issues
- [12] The sole issue is whether the Officer's decision was reasonable. IV. Standard of review
- [13] The applicable standard of review is reasonableness (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 [Vavilov]). V. Analysis
- [14] The applicant submits that the Officer made an unreasonable decision by rejecting the findings of the expert Report and being selective about the evidence he relied on.
- [15] I note that the only new personalized document submitted to the Officer is the expert Report. Nothing in the Decision indicates that the Officer did not accept the expertise of its author, or that he preferred other documentary evidence and gave the latter more weight. This Court has maintained that once expert evidence is put forward and reviewed by the decision-maker, it deserves a thoughtful and thorough analysis before it can be rejected (Naeem v Canada (Minister of Citizenship and Immigration), 2008 FC 1375 at para 24).
- [16] I find that, in his decision, the Officer considered the Report but misinterpreted it, such that the chain of reasoning was lost. The Report is specifically about the applicant as the sole subject. It notes that since 2011, Amnesty International has recorded hundreds of arrests, many of them simply for supporting the wrong political actor. It goes on to explain why the applicant, who is higher-profile, is an easy target for the authorities. It then provides specific examples of high-profile individuals who have been arrested, detained and tortured in poor conditions. It is difficult to understand how the Officer understood that the Report's conclusion applied only to high-profile individuals when the author specifically mentions that it does not take much to be arrested and interrogated; just supporting a rival is enough.

- [17] The respondent submits that the Officer's decision demonstrates that he considered the matter fairly. The respondent also argues that, given that the applicant had used a different name on his Facebook account, it was reasonable for the Officer to conclude that Ivorian authorities were unlikely to link the applicant to his social media activity. What the Officer does not realize—and the respondent's argument does not satisfactorily address—is that if the applicant has any problems, i.e., if he is arrested, he cannot be expected to lie in answer to questions to avoid persecution (*Donboli v Canada (Minister of Citizenship and Immigration)*, 2003 FC 883 at para 8).
- [18] I agree with the applicant that the expert Report was the main piece of evidence and that it addressed the risk faced by an individual with the applicant's own characteristics. However, the Officer simply dismissed it by ignoring or misinterpreting significant portions of the Report. I find this to be similar to what happened in *Shariaty v Canada (Public Safety and Emergency Preparedness)*, 2017 FC 986, in which my colleague Justice Manson granted the judicial review and found that a PRRA decision was unreasonable based on the very same error.
- [19] The Officer's risk analysis was based on selective and incomplete evidence, which resulted in a mischaracterization of the evidence as a whole. This is also why this Court granted the judicial review in *Fraige v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 1217.
- [20] I therefore find that the decision is not reasonable. The judicial review is allowed and the matter is referred back for determination by a different officer.
- [21] There is no question for certification. JUDGMENT in IMM-9192-22 THIS COURT'S JUDGMENT is as follows:
1. The judicial review is allowed and the matter is referred back for determination by a different officer.
 2. There is no question for certification. "Negar Azmudeh" Judge Certified true translation Melissa Paquette, Senior Jurilinguist FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-9192-22 STYLE OF CAUSE: MAMADOU KONATÉ v. THE MINISTER OF PUBLIC SAFETY PLACE OF HEARING: VIDEOCONFERENCE DATE OF HEARING: JUNE 18, 2024 JUDGMENT AND REASONS: AZMUDEH J. DATED: JULY 22, 2024 APPEARANCES: Déborah Andrades-Gingras For the applicant Daniel Latulippe For the respondent SOLICITORS OF RECORD: Bellefleur Légal Inc. Montréal, Quebec For the APPLICANT Attorney General of Canada Montréal, Quebec For the respondent

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