



allowed his appeal on humanitarian grounds and on Article 3 ECHR grounds.

## **Background facts**

2. The respondent, a citizen of Algeria, claimed that he is at risk in Algeria for two reasons: his desertion from the Algerian gendarmerie and the real risk that he will be seriously harmed by a drug trafficking gang with connects to a Colonel in the gendarmerie, on the basis that he played an instrumental role in investigations regarding the gang's activities.
3. In a comprehensive decision, the FTT did not accept the respondent faces a real risk of persecution for reasons relating to his desertion but accepted he is at real risk of serious harm from the gang, albeit not for a Convention Reason.

## **Grounds of appeal to the Upper Tribunal**

4. In wide ranging grounds of appeal the SSHD appealed against the decision of the First-tier Tribunal. These grounds can be summarised as follows:
  - Ground 1: the FTT failed to give adequate reasons for finding that the risk from the gang is ongoing.
  - Ground 2: it is unclear whether the FTT accepted that the respondent's friend and colleague, Nassardin was killed by the gang or not.
  - Ground 3: the FTT failed to reason whether the authorities could provide the respondent with sufficient protection.
  - Ground 4: the FTT failed to address internal relocation.
5. Permission to appeal was refused by the FTT but granted by Upper Tribunal Jordan in a comprehensive decision dated 17 November 2017. He noted that the respondent's account was "*substantially accepted*" by the FTT, and it undoubtedly accepted that Nassardin was killed. Judge Jordan went on to observe that in considering whether the Algerian state could provide sufficient protection this arguably required a "*more detailed enquiry*" than the FTT conducted.

## **Hearing**

5. Mr Harrison relied upon the grounds of appeal and Judge Jordan's observations, and was content to make no additional oral submissions. Mr Harrison however clarified in response to questions from me that the only ground of appeal that is pursued is ground 3: the failure to give reasons for finding that protection would not be sufficient. He accepted that permission was not granted regarding ground 2; grounds 1 and 2 should be read together and come under

the broader head of sufficiency of protection; ground 3 relates to internal protection but this was not raised as an issue of concern in the decision letter or at the hearing by the respondent.

6. Ms Khan relied upon a detailed rule 24 notice and made helpful submissions in support of this. She submitted that the only real ground that survives is that relating to sufficiency of protection, and when the decision is read as a whole, the FTT provided adequate reasons for its conclusion.
7. After hearing from both representatives, I reserved my decision, which I now provide with reasons.

### **Error of law discussion**

7. After making detailed and comprehensive credibility findings the FTT substantially accepted the respondent's account. The FTT expressly directed itself to the correct test in Horvath v SSHD [2000] UKHL 37 on assessing sufficiency of protection, and there is no reason to consider that this test was not borne fully in mind when the FTT weighed up the competing considerations in order to determine the issues of real risk and sufficiency of protection, which the judge referred to as the "*ultimate questions*" - see [73] and [74]. Indeed, Horvath is referred to again at [81] when the FTT answers the ultimate questions. The FTT acknowledged at [74] that these ultimate questions "*are quite finely balanced but just come down in favour of*" the appellant.
8. The Court of Appeal has recently revisited the duty to provide adequate reasons in MD (Turkey) v SSHD [2017] EWCA 1958. Singh LJ said this:
 

"26. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed.

27. In the present case, in my view, it was tolerably clear why the FtT decided the case against the Secretary of State as it did. The FtT addressed the main points in dispute between the parties, including the appellant's credibility, including discrepancies in the appellant's evidence, in particular relating to the question of the arrest warrant."
9. In my judgment, the SSHD as the losing party has been provided with adequate reasons to know why she has lost. It is tolerably clear why the FTT decided the issue of sufficient protection in the manner it did.

The FTT's reasoning for this can be paraphrased in the following manner:

- There are three specific reasons which suggest that the respondent may have sufficient protection from the state:
  - (i) the guidance in RM (Military Service – RCD – FIS) Algeria CG [2002] UKIAT 0432 indicates that the authorities provide sufficient protection to those in fear of the FIS terrorist group;
  - (ii) the respondent was not in hiding for a period of two months, after two attempts were made on his life;
  - (iii) the respondent said at interview he had received a degree of protection from the authorities.
- Whilst these tend to show that in general and for many the Algerian state offers sufficient protection, there are two particularly compelling factors in this case, which tip the balance and support the respondent's claim on the "*ultimate questions*" i.e. that there is a real risk (applying the lower standard of proof) that this respondent will not receive sufficient protection:
  - (i) two attempts were made to seriously harm / kill the respondent in 2015;
  - (ii) there is no reason to believe that the level of protection afforded to the respondent would be any higher than that provided to his friend and colleague, who was shot and killed after this.

10. The FTT could have gone on to consider matters in more detail, including some of the gaps raised by Judge Jordan when granting permission, but that would be to require a counsel of perfection. It is sufficiently clear that the FTT accepted that Colonel Aldijali, who was the gendarmerie Colonel in charge of the Oran area and therefore in a position to obtain information regarding other areas, was an important power behind the threat, and that a similar threat had already been successfully carried out.
11. I also accept Ms Khan's submission that some of the gaps in the evidence raised by Judge Jordan would be very difficult for the respondent to obtain. In this respect it is noteworthy, as Mr Harrison accepted, that the SSHD's own decision letter did not address sufficiency of protection, which would be the normal course in decisions such as this, even where credibility is not accepted. It follows that the FTT did not have any submission or evidence from the SSHD as to why protection for this respondent would be sufficient (or why he could relocate when part of the source of the threat was connected to the state). The burden of proof of course remained on the respondent, but to the lower standard. The respondent, on the other hand, relied upon the US State Department report for 2016 which includes the following:

“The government did not take sufficient steps to investigate, prosecute, or punish public officials who committed violations. Impunity for policy and security officials remained a problem, and the government rarely provided information or actions against officials accused of wrongdoing.”

12. The FTT decision provides adequate reasons for its conclusion that notwithstanding some matters pointing in the opposite direction, there is a real risk that this respondent faces serious harm from which he cannot expect sufficient protection.

## **Decision**

13. The decision of the First-tier Tribunal did not involve the making of a material error of law and I do not set it aside.

Signed:

Ms M. Plimmer  
Judge of the Upper Tribunal

Date:  
8 March 2018