Case No: C/2001/1953 IATRF

Neutral Citation Number: [2002] EWCA Civ 722
IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE IMMIGRATAION
APPEAL TRIBUNAL

Royal Courts of Justice
Strand,
London, WC2A 2LL

Wednesday 22nd May 2002

Before :

LORD JUSTICE POTTER
LORD JUSTICE KEENE
and
MR JUSTICE SUMNER

- -

Between :

JON HAIRO ORTIZ SUAREZ	**Appellant**
- and -	
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -

(Transcript of the Handed Down Judgment of
Smith Bernal Reporting Limited, 190 Fleet Street
London EC4A 2AG
Tel No: 020 7421 4040, Fax No: 020 7831 8838
Official Shorthand Writers to the Court)

- -

Manjit S Gill QC and James Collins Esquire (instructed by Sheikh & Co, London) for the appellant
Angus McCullough Esquire (instructed by the Treasury Solicitor) for the respondent.

- -

Judgment
As Approved by the Court

Crown Copyright ©

Lord Justice Potter :

INTRODUCTION

1. This appeal is principally concerned with 'imputed political opinion'.

2. It is brought under s.9 of the *Asylum and Immigration Appeals Act 1993* which provides for an appeal from a final determination of the Immigration Appeal Tribunal (IAT) on any question of law material to that determination.

3. The relevant determination is that contained in a decision of the IAT dated 31 July 2001 but in fact promulgated on 15 August 2001.

4. The IAT dismissed the appeal of the appellant from the determination of the Special Adjudicator, Miss B. Mensah, promulgated on 27 February 2001 whereby she had dismissed the appeal of the appellant from the decision of the Secretary of State for the Home Department dated 11 April 2000 refusing the appellant's application for asylum under paragraph 336 of the Immigration Rules HC 395.

5. Article 1A(2) of the Geneva Convention provides that a refugee is a person who:

> "owing to well founded fear of being persecuted for reasons of ... membership of a particular social group, *or political opinion,* is outside the country of his nationality, and is unable, or owing to such fear, unwilling to avail himself of the protection of that country." (emphasis added)

6. It was and is the case for the appellant, who is a former soldier of the Colombian Army, that the Convention reason for which he fears persecution is that of political opinion imputed to him by virtue of his having taken a stance against the endemic corruption and lawlessness in Colombia, having witnessed the criminal activities of his immediate commanding officer and, in particular the murder of a farmer called Guzman.

THE FACTUAL BACKGROUND

7. We take the factual background in part from the witness statement of the appellant and in part from the judgment of the Special Adjudicator.

8. The appellant is a citizen of Colombia. He is thirty-four years of age and arrived in the United Kingdom on 1st February 1997 with this wife and two children, immediately claiming asylum.

9. A summary of his case is as follows. He said that in 1982 he and his younger brother, who were then living with their grandparents, had reported guerrillas in the area to the authorities and that, on 1 December 1982, when he and his brother were returning home from school, they were ambushed on a bridge. His brother was hit and seriously injured, but he escaped unharmed to Bogota, never to return to his grandparents' home. In June 1986, he joined the army to fight the guerrillas. He became aware of wrongful activities on the part of his superiors who would stage ambushes and say that the guerrillas had done it. However, the incident which led to his deserting the army and fleeing Colombia was as follows. In November 1996 he and two other soldiers saw Guzman enter the military office and have conversation with his Captain and a Sergeant who were the appellant's superiors. He overheard a conversation between the three men which indicated that the Captain and Sergeant were selling arms which the army had captured from the guerrillas back to them through Guzman as a middleman. He had also known for some

time that the Captain and Sergeant, who were designated to destroy drug plantations as well as to fight the guerrillas, were dealing in part of the drugs crops which they were supposed to destroy.

10. On 20 December 1996 the appellant was a witness to the shooting of Guzman by his Captain. The Captain went into Guzman's home with two soldiers while the appellant guarded the house outside. He heard shooting and went in, it being obvious that the Captain had killed Guzman. On the following day he and some of his friends who knew of the Captain's activities went to him to say they did not agree with the arms dealing and drugs smuggling. They were told to keep their mouths shut and promised money otherwise they would be killed. On that very evening, during a confrontation with guerrillas, the Captain and two Sergeants shot at the appellant and his friends, two of whom were hit. The appellant fled the scene and went to this home arriving two days later on 24 December. There his wife reported three threatening phone calls which the appellant attributed to the Captain.

11. The appellant said that the following day he heard motorbikes come to his home in the evening and shouts that he would be killed. There was shooting at the house. He fled with his wife and two children by a back way. Unhappily, his mother-in-law was killed. He said that, while in hiding, he decided there was no option but to escape from Colombia, otherwise he would be killed by the Captain and Sergeants or the guerrillas. He did not believe that the authorities would provide him with protection. Consequently he obtained a passport on 16 January 1997 and obtained flight tickets. He and his family went to Bogota where they were hidden by a friend until the time of the flight. On 31 January 1997 they flew to London.

12. Extensive literature was produced to the Special Adjudicator including the October 2000 'Colombia Assessment' of the UK Immigration and Nationality Directorate Country Information and Policy Unit. Key parts of that material have also been placed before us, save that our bundle contains an updated assessment from the CIPU dated April 2001. Counsel for the appellant relied upon that literature as showing endemic corruption in Colombia which creates localised overlap between the state, guerrillas and paramilitary elements. Counsel submitted that, if the applicant returned, he would not simply get a military punishment for desertion but would be killed or imprisoned.

13. The Special Adjudicator was not impressed with the credibility of the appellant. She stated:

> "36. I had the benefit of seeing and hearing the appellant give evidence. His account was full of detail on certain aspects but where there were difficulties in cross-examination (such as the killing by his Captain) his account was evasive and contradictory. I did not for the most part find him to be a credible witness."

14. However, she went on to say that, even if she were to accept the appellant's account she did not consider that his claim could succeed. In this respect she stated:

> "37. I accepted that the appellant had been in the army. I also accepted his evidence that he had no political interests. The submission on his behalf was that his case was based on imputed political opinion due to the stand he had taken against his commanding officer. The basis of his claim was in respect of an incident in which his commanding officer had shot dead a Mr Guzman. He had been evasive on the point and I was satisfied from his evidence that he had not witnessed the shooting. The background to the shooting, according to the appellant, was a financial conflict linked with arms and drugs dealing between the commanding officer and the criminal elements. He and others had later confronted the commanding officer who had threatened to kill them and as a consequence the appellant had fled. A couple of days later there had been an attack on his house. He had managed to escape through the back door but his mother-in-law had been shot dead, during the attack. Although the appellant claimed in evidence that he wanted to take a stand against corruption, he had not in fact done so. He had fled when threatened by his commanding officer.

> Although he also claimed in evidence that if the Captain did not want witnesses he would kill them, that had not been done in his case."

15. Again the Special Adjudicator said that she did not find his account convincing. Nonetheless, she went on:

> ".. even if I accepted it in its entirety I noted that the events all occurred three years previously and the appellant was now in this country with his family. It would have been clear to the commanding officer that the appellant had not witnessed the actual shooting and that he had not reported the matter to the authorities, either immediately after the shooting or after being threatened or after his house was attacked. It would have been clear to the commanding officer that he had succeeded in silencing the appellant. The appellant presented no evidence of what had happened to his colleagues who had also complained or of the 40-50 other witnesses at the shooting incident. I consider it inherently unlikely that his commanding officer (if he was still in the army) would know of the appellant's return from abroad and that even if he did that he would have been concerned 3 years after the incident to seek him out."

16. She went on to say that she attached little weight to two extracts from local newspaper reports which were in general terms stating that the appellant had had to flee with his family following threats which he had received. She stated:

> "There was no mention of the source of the threats, no details of his Captain or of named guerrilla groups. Although the second article mentioned that the appellant had served military service in a particular battalion, it gave no details of the specific complaint or allegation. In the circumstances and in the absence of any news of the commander's whereabouts or continuing interest, I was not satisfied that there was any continuing or current interest in the appellant."

17. Having dealt with the question of continuing threat, the Special Adjudicator reverted to the question of imputed political opinion. She stated:

> "38 I agree with Mr Davidson that there was no Convention ground in this case. I did not accept the argument of Mr Collins of imputed political opinion. All that could be said of the commanding officer was that he was allegedly involved in criminal activities. He was concerned to silence the appellant in order to avoid the consequences of criminal prosecution if his activities were exposed. At best all that could be said of the appellant was that he wished to expose his commanding officer but had taken no steps to do so ... although he had supposedly known for some time of his commanding officer's criminal activities he had not taken any action to expose them or leave the army. I was not satisfied that any general political opinion could be imputed to him on the lines of his being on the side of law and order and against the 'dark forces' of guerrillas and criminal gangs. He had merely 'witnessed' (in the sense of being in the vicinity of) a crime and had confronted the alleged perpetrator but had not taken the matter further."

THE DECISION OF THE IAT

18. The IAT confirmed the decision of the Special Adjudicator. On the question of imputed political opinion the submissions for the appellant were summarised thus:

> "Mr McGivern in his submissions maintained that the adjudicator had failed to consider the objective evidence that was before her in relation to Colombia.

> There was an imputed political opinion attributable to the appellant by reason of his knowledge of his senior officer's corrupt criminal activities. The motive of the officer threatening to kill him was entirely political. This had not been considered by the adjudicator. He submitted that there was evidence of abuse by the army with impunity with respect to criminal activities of members of the army."

The tribunal dealt with the issue briefly as follows:

> "9. We do not consider that there is any merit in the submission by Mr McGivern that the appellant is at risk by virtue of an imputed political opinion. The evidence is quite clear that the appellant, if he is at risk at all, is at risk by virtue of the fact that he is aware that a senior officer, acting contrary to military directions, was involved in criminal activities and may also have been involved in the murder of an innocent farmer. His superior officer was not acting by reason of any political motives, merely seeking to enrich himself by taking advantage of the extensive criminality that exists in his country. In so doing, he was associating himself with such criminality. In the course of this activity he may also have perpetrated a murder. None of this activity in our view can be attributable to political motives either in the form of disapproval of the action of the army in fighting criminal elements or in disapproval of the government of his country. Whatever the appellant's association with the officer may be, we cannot for these reasons consider that desertion from the army and his possible threat to the future career of his senior officer, can in any way be attributable to political motives, imputed or otherwise."

19. The appellant had also submitted that the US State Department Report and reports from the UNHCR were evidence of abuse by the Colombian Army with impunity in respect of criminal activities of members of the army and that protection would not be provided for the appellant were he to return home. If he went to prison for desertion the prison conditions were so bad that imprisonment would itself amount to persecution. In prison he would be reached and maltreated by the officers concerned. The tribunal held however:

> "10. So far as the fear of the appellant at the hands of his superior officer is concerned, the US State Department report indicates that the government does take action against members of the security forces who are complicit with paramilitary groups and other illegal organisations. The documentary evidence before us indicates that the government actively encourages the report of criminal activities and the victims of crime. In the event that this appellant is returned to Colombia and faces charges of desertion, the whole story leading up to the murder of Mr Guzman will become known. In the circumstances of this case the objective evidence before us would indicate that the army would not hesitate in acting against the appellant's former superior officer.
>
> So far as the question of desertion is concerned, the penalties for desertion are between six months and two years imprisonment. The background evidence would indicate that prison conditions are generally harsh and in this regard the appellant would be in no worse condition than that of any other prisoner serving out their sentences. There is no evidence that the appellant's superior officer would be in any position to exact revenge upon him once he had been imprisoned. Quite the contrary, in the circumstances of this case it would appear to us more likely than not that the officer himself would be imprisoned following court martial or criminal trial."

THE APPELLANT'S SUBMISSIONS

20. For the appellant, Mr Manjit Gill QC has submitted that the decision of the IAT was a flawed and inadequate one, in that the IAT had (like the Special Adjudicator below) erred in its approach to the question of imputed political opinion in the context of conditions in Colombia which, as he submits the background material demonstrated, is a society where the state does not exist independently of criminal conduct, corruption being endemic and the state institutions including the army being closely linked to criminality, paramilitary groups and drug cartels, including corrupt dealings with guerrillas whom the army are for the most part seeking to suppress. In those circumstances he submits that a person such as the appellant who challenges his superiors in the army over their conduct in committing murder, selling arms to guerrillas, or drug dealing will be seen by those officers as holding a political opinion about the abuse of power by the organs of state and will be persecuted for that reason. That should have led the IAT to conclude that the actions against the appellant by these officers, namely the attempts to kill him and his family immediately after he had challenged the officers over their actions were not merely the acts of criminals intent on intimidating and silencing a witness to their crimes, but acts of persecution on the ground of imputed political opinion.

21. As a matter of specific criticism, Mr Gill picks up the sentence in paragraph 9 of the IAT's decision beginning 'his superior officer was not acting by reason of any political motives ...' and asserts that the tribunal appears to have concentrated on the political motives of the officer whereas its true concern, should have been the question of whether or not, in the Colombian context, the officer was, at least in part, imputing to him a political opinion in the sense of a stance opposed to the endemic corruption of authority. In this connection we were referred by Mr Gill to the following particular authorities: two decisions of the IAT in *Acero Garces –v- Secretary of State for the Home Department* [1999] INLR 460 and *Gomez –v- Secretary of State for the Home Department* [2000] INLR 549, the latter being a 'starred' decision for the guidance of Special Adjudicators; a decision of the Federal Court of Australia in *Y –v- Minister for Immigration and Multi-Cultural Affairs* [1998] 515 FCA (15 May 1998), subsequently approved by the full court of the Federal Court of Australia in *Voitenko –v- Minister for Immigration and Multi-Cultural Affairs* [1999] FCA 428; and the decision of this court in *Storozhenko –v- Secretary of State for the Home Department* [2001] EWCA Civ 895.

DISCUSSION

22. I shall refer first, though not at length, to the Australian decision in *Y* because Mr Gill has indicated that the question which the original tribunal in that case had asked itself encapsulates the approach which he says should have been adopted by the IAT in this case, namely

> "Whether Y would be looked upon merely as a campaigner against corruption who was at risk of retribution by individual corrupt officials, or whether corruption was so much a part of government and of the exercises of state power in Brazil that opposition to it could be regarded as opposition to authority as it was organised or operated in Brazil."

23. Davies J held that this was a proper approach to the issue. He stated:

> "I do not see any error in the general approach taken by the Tribunal. In the context of the Refugees' Convention, an opinion could be thought to be a political opinion if it were such as to indicate that its holder, the claimant for refugee status, held views which were contrary to the interests of the State including the authorities of the State. A person may be regarded as an enemy of the State by virtue of holding and propounding views which are contrary to the views of the State or its Government, or which are antithetic to the Government and instruments which enforce the power of the State, such as the Armed Forces, Security Forces and Police Forces which express opposition to matters such as the structure of the State or the territory occupied by it and like matters."

24. I do not go further into the detail of the decision in *Y* because it received lengthy exposition and analysis in the judgment of Brooke LJ in *Storozhenko* at paras 36-43. Brooke LJ did not find it necessary in his judgment to seek to define the boundaries of the expression 'political opinion' in the Geneva Convention. As is clear from his judgment, this was because the question of imputed political opinion must always depend upon the context in which the question of definition arises and because, whatever the precise location of those boundaries, despite the extent of the corruption acknowledged to exist in the Ukraine he did not consider that the facts of the case established such a reason for Mr Storozhenko's treatment. He pointed out that the decision of Davies J was in the end simply a refusal to disturb the conclusion of the tribunal in that case that *Y's* knowledge and conduct;

> "made him a danger not only to the policemen involved in the incident which he had observed but to the Police Force in general and to the manner in which power is exercised in Brazil."

25. Brooke LJ stated:

> "It would, in my judgment, on the face of it be stretching the expression ["political opinion"] much too far if one was to apply it to the facts of Mr Storozhenko's case. *He was being persecuted because the local police did not want him pressing an enquiry into the misconduct of one of their officers who had assaulted him. I am inclined to agree with the appeal tribunal that the persecution he suffered resulted from his attempts to ensure that his assailant was punished, and that it was manifestly artificial to talk in terms of imputed political opinion.*" (emphasis added)

26. He later referred (at para 46) to:

> "The need to be cautious about over-enthusiastically seeking a Convention reason for persecution where such a reason cannot be found without distorting the facts..."

27. Brooke LJ referred to various Australian and Canadian cases which had been cited to him in support of the submission that, in the case before him, the IAT should have identified Mr Storozhenko's imputed political opinion as the reason for the prospective persecution which he feared. He also referred to the arguments which had been put to the court along similar lines to those in the instant case. He stated:

> "49. [The appellant's counsel] argued that the action of his client's persecutors might potentially be seen as persecutions stemming from the desire to put down any dissent viewed as a threat to them and their place in society, and/or their ability to control their environment. Alternatively they might be treated as a reaction to a statement of facts seen to be dangerous to those in authority (*Y*) or to acts of Mr Storozhenko perceived to be reflective with an unstated political agenda (*Y*) (*Voitenko*).
>
> Finally, he submitted that in respect of the background situation there was scope to conclude that his client's persecutors operated a state organ (*Vassilief*) and that corrupt/criminal elements permeated that organ to such an extent as to be part of the very fabric of state organs (*Klinko*).
>
> 51. In my judgment, this analysis is altogether too sophisticated on the facts of the present case. It illustrates the dangers of trying to place more weight on the dicta of other judges deciding other cases concerned with different factual situations than those dicta can properly bear ..."

28. Mr Gill has acknowledged the force of those submissions in that case. However, he submits it is all a question of degree; the Ukraine is not Colombia. In this respect he relies upon the observation of Collins J when giving the decision of the IAT in *Storozhenko* (19935) (Unreported) as follows:

> "We do not regard *Garces* as authority for the proposition that any victim of crime who seeks redress but cannot because of police corruption or the powers of criminal elements, is entitled to the protection of the Convention ground because he may perceived to be on the side of law and order. Normally, imputed political opinion will arise where there is perceived opposition to a policy espoused by the government or its agents. Since protection can be extended to cover those who are persecuted not by the government or its agents but because the government is unable or unwilling to afford protection from the persecutors, witnesses to crime may, if they come forward to help, be properly regarded as coming under the umbrella of imputed political opinion. But we think that such cases would be rare and limited to situations such as exist in Colombia where no protection can be given because the criminals are in effective control."

That comment was quoted in paragraph 60 of the IAT's decision in *Gomez*.

29. When dealing with the motivation of a persecutor, it has to be appreciated that he may have more than one motive. However, so long as an applicant can establish that one of the motives of his persecutor is a Convention ground and that the applicant's reasonable fear relates to persecution on that ground, that will be sufficient. Thus, if the maker of a complaint relating to the criminal conduct of another is persecuted because that complaint is perceived as an expression or manifestation of an opinion which challenges governmental authority, then that may in appropriate circumstances amount to an imputed political opinion for the purposes of the Convention. That is made clear in the Colombian context in *Gomez* at 560 para 22. Although, in the case of *Gomez*, the acts of persecution of the appellant were those of non-state actors, namely members of the armed opposition group FARC, the decision contains an illuminating discussion, replete with reference to authority, of the problems associated with the notion of *imputed* political opinion in a society where the borderlines between the political and non-political have been distorted so that it is difficult to draw a distinction between governmental authority on the one hand and criminal activity on the other.

30. In such cases, the political nature of an applicant's actions or of the opinions which may be imputed to him in the light of such actions must be judged in the context of the conditions prevailing in his country of origin. Thus, what may in a relatively stable society be a valid distinction between a crime committed for the purposes of revenge, intimidation or the furtherance of some other personal interest on the one hand, and a political crime of repression on the other, may not hold good in a society where violence and repression are routinely used to stifle political opinion or any challenge to established authority: see paras (42)-(45) of *Gomez*.

31. Surprisingly, in the light of its having been reported at [2000] INLR 549, *Gomez* appears not to have been brought to the attention of this court in *Storozhenko*. This appears clear from the absence of any mention of it in the decision, not least in connection with the reference by Brooke LJ to the decision of the IAT in *Acero Garces –v- Secretary of State for the Home Department* [1999] INLR 460 in relation to which the IAT stated in *Gomez* that:

> ".. in reaching its findings in this case it has not had recourse to broad 'Star Wars' generalisations about the appellant being seen as on the side of law and order or in opposition to 'dark forces'. In contrast to certain isolated passages to this effect in *Acero Garces* ... it has examined the different elements in the appellant's situation pointing to the presence or absence of political motives in the actions of her persecutors and doing so on the basis of concrete evidence as to the general situation pertaining in present-day Colombia as set out in the US State Department Report and other sources."

32. The value of *Gomez* lies not only in its general discussion of the principles involved, supported by extensive quotation from Convention jurisprudence including the decision in *Y* (see paragraph 22-24 above), but in its clear statement of the need to establish a *nexus* between the acts of persecution relied on

and the political opinion (imputed or otherwise) on account of which such persecution is feared. In this connection the IAT observed that, without entering on the question of whether the correct test of causation in relation to nexus was a 'but for' or an 'effective cause' test:

> "Two things are clear: just because persecutors may in some cases attribute political opinions to victims or opponents does mean that they will necessarily do so in every case. A family wishing to revenge the killing of their son may not impute a political opinion to the murderer notwithstanding that the murderer is one of their political opponents. Of course the family's motives in a particular case may be both private revenge and political animus, but that will not always be so.
>
> (53) It is also common sense that although one may hold a political opinion, not everything one does is motivated by that political opinion.
>
> (54) Reflecting these common sense notions, the tribunal would categorically reject the idea that even in countries such as Colombia where the boundaries between the political and the non-political have been heavily distorted by the conduct of para-military bodies and drug cartels, every case where such a body persecutes someone must be on account of an imputed political opinion. We would reaffirm the point made in *Quijano –v- Secretary of State for the Home Department* [1997] Imm AR 227 that where the concern of persecutors was not a political one but rather to maintain their economic position through criminal activities and to that end intimidate and if necessary, eliminate those that oppose the pursuit of that aim, then there will be no conflict based upon a refusal to perform political acts, but only criminal ones.
>
> (55) The assessment will all depend upon the particular circumstances of a case examined in the light of all the evidence circumstantial otherwise."

I would endorse those observations.

33. In *Gomez*, having reviewed the UNHCR Reports and the report of the US State Department made available to it in that case, the IAT applied to such information the principles it had propounded. In relation to the situation of the applicant who had fallen foul of FARC it observed:

> "(65) In view of the above, the tribunal considered that in a case such as this where the threat is said to come from a powerful guerrilla organisation like FARC or ELN, there will be less difficulty than otherwise in establishing that a possible opinion that such a group will impute to those who stand in their way will be a political one.
>
> (66) ... Even where the non-state actor is a guerrilla organisation (like FARC) carrying out state-like functions in parts of the country there will arise cases in which no political motive is involved. Such organisations, for some if not much of the time, may act for purely economic reasons. Their reasons for seeking retribution against victims may, for some if not much of the time, be purely criminal. Indeed, the background evidence suggests that most of kidnappings undertaken by FARC and ELN are 'financially motivated' (1985 in 1999) rather than 'politically motivated' (372 in 1999). Deciding whether any kidnapping is purely financial or purely political or is for mixed financial and political motives will obviously therefore depend on the particular circumstances of each case."

34. In the event, the IAT in *Gomez* decided that the actions taken against the appellant had not been taken by reason of any imputed political opinion. In considering her case it stated:

> "We also attach particular significance to the fact that on the appellant's own account those who threatened her never at any stage said anything to her to convey that they viewed her as a political threat."

35. I have referred at some length to the case of *Gomez*, not only because of its relevance in the particular context of Colombia, but because both parties have accepted for the purposes of this appeal that the principles stated therein are applicable to this case. I am therefore content to proceed upon that basis, at the same time, like the court in *Storozhenko,* refraining from exploring the precise boundaries of the phrase "political opinion" for the purposes of a general definition of the kind attempted by certain of the sources referred to in that decision. Whilst acknowledging that in *Gomez* the IAT was dealing with persecution from non-state actors, that does not seem to me a distinction of great significance in this case. I say that, because it was never the appellant's case that the Captain and the two Sergeants who assisted him were acting on behalf of, or with the approval of, the government or their superiors in the army. Rather were they acting as renegades outside their function and contrary to their instructions. They were acting for their own criminal ends and were themselves in fear of exposure to higher authority. In the circumstances of this case, as reflected in the submissions of Mr Gill, the Special Adjudicator and the IAT were asked to consider the motives of the Captain and Sergeants in 'persecuting' the appellant. While it was also submitted that higher army/state authority might be incapable of extending sufficient protection to the appellant from his immediate persecutors, it was not suggested that they were otherwise complicit in any way with the actions of those persecutors. In this situation the position of the persecutors was analogous to that of a non-state actor rather than a state actor when committing the acts of persecution complained of.

36. In my view, it is not necessary to refer more widely to authority than I have already done in order to come to a conclusion in this case.

37. As already indicated, Mr Gill has based his lengthy and careful submissions upon the observations in *Gomez.* In essence however, his attack on the decision of the IAT come down to this. He submits that paragraph 9 of the decision quoted at paragraph 18 above demonstrates that the IAT erred in its assessment of 'imputed political opinion' in that it looked at whether or not the appellant's persecutors acted from political motives, rather than at the question whether they imputed political motives to the appellant. In this respect he highlights the sentence

> "His superior officer was not acting by reason of any political motives, merely seeking to enrich himself by taking advantage of the extensive criminality that exists in his country."

38. Mr Gill submits that the crucial issue was not the persecutors' motives but how they perceived the role of the appellant in making a stand against their criminal activities. He submits that, in the Colombian situation, such a stand is implicitly a political act because the person who confronts authority immediately become a threat to it. He suggests that the IAT must have failed to analyse the position on the lines propounded in *Gomez*, because there is no reference to that case in the IAT judgment, the form of which is so succinct that it does not bespeak such analysis. Mr Gill says in effect that, in the face of the material placed before the court, the decision was plainly wrong, the only reasonable finding being that a person standing up for law and order as the appellant was must have been perceived by those whom he challenged to be manifesting a potential challenge to the authority of the government or the army as a whole.

39. I reject those submissions. It does not seem right to me that we should assume that the tribunal did not have the observations in *Gomez* in mind. There are comparatively few starred decisions such as *Gomez*. Such a decision is one by which the Special Adjudicators should regard themselves as bound and which the IAT should follow unless satisfied that the decision is clearly wrong: see per Laws LJ in *Seper and Bulbul –v- Secretary of State for the Home Department* [2000] Imm AR 445 at para 99. As such it is no doubt in the 'desk-drawer' of Special Adjudicators and members of the IAT. Further, in a case where the IAT was effectively confirming the decision of the Special Adjudicator in relation to arguments largely already advanced to her, it was not incumbent on the IAT to set out a lengthy analysis of a matter which

appeared to them clear; in my view, there is nothing in paragraph 9 which is inconsistent with the observations in *Gomez*, particularly in relation to nexus.

40. On the particular facts of this case, the claimant had witnessed a murder committed by three of his immediate superiors in circumstances where there is no suggestion such action had been authorised by, or enjoyed the approval of, higher authority within the army. On the next day, when the appellant protested at these matters, he was immediately threatened by one of those superiors that he would be killed if he said anything and, within hours, the perpetrators of the crime had shot at him, killing his friend and causing him to flee. It was also his case that, on his return home, the follow-up threats and shooting which took place two days later where the work of the same perpetrators in an effort to silence him. His fear as to what might happen on his return was not that the government or higher authorities within the army would persecute him on the ground of his political opinions but that he might go to prison for desertion where the perpetrators of the crime might yet seek to kill him in order to secure his silence.

41. In these circumstances, it was plainly open to the IAT to find, as the Special Adjudicator had found, that if true this was the case of a man (laudably it should be said) who had protested at a criminal act or acts by three of his immediate superiors, who then sought to silence him to prevent him from taking that matter further. While he feared for his safety on his return to Colombia on the basis that the same men might get to him in prison, should he be sentenced for desertion, there was no reason to suppose, nor did the appellant really suggest, that reprisals would come from any other quarter or for any other reason.

42. While the reasoning of the IAT appears only in brief form at paragraph 9 of its decision, it appears to me to provide clear reasons, consistent with the decision in *Gomez*. The first sentence demonstrates that the IAT was dealing with the argument of 'imputed political opinion'. In the second sentence it made clear that, if the appellant was a risk, it was because of what he knew and had witnessed (i.e. criminal activities) and not for his political opinion. The third and fourth sentences make clear that the persecutors were not acting for political motives of their own but seeking to enrich themselves by crime. The fifth sentence returns to the position of the appellant and says that none of the matters referred to can (in the sense, no doubt, of 'can reasonably') be attributed to political matters in the form of more general disapproval of the actions of the army or of the government of the country. The final sentence rejects the argument that the appellant's actions are attributable to political motives imputed or otherwise.

43. In the succeeding paragraph, the IAT states that the documentary evidence indicates that the government now encourages the reporting of criminal activities of this kind. That is of significance in relation to the issue of imputed political opinion only to the extent that it rebuts any suggestion (which the appellant had not in fact made) that the acts of his persecutors had the authority and approval of the government. That being so, the fears of the appellant as to the sufficiency of the protection which he would be afforded against his persecutors on his return cannot in itself convert a non-Convention reason for his persecution into a reason justifying the right to asylum.

CONCLUSION

44. For the reasons stated above, I would dismiss this appeal.

45. I would add the following by way of postscript. Although the Special Adjudicator had doubts about the credibility of the appellant, it does not appear that she doubted, and certainly the IAT appear to have accepted, the appellant's wife's evidence as to threats received and the attack made upon the appellant's home. As observed by Simon Brown LJ in *Omoruyi* [2001] Imm AR 175 (para 7) and repeated in the case of *Storozhenko*, the Secretary State has long since undertaken not to expel those whom there are good grounds to believe on their return home will be at real risk of serious harm (see *R –v-Secretary of State for the Home Deportment ex parte Turgut* [2000] UK HRR 403. He will therefore no doubt consider whether the appellant may be entitled to exceptional leave to remain under Article 3 of the European Convention of Human Rights.

Lord Justice Keene:

46. I agree that this appeal should be dismissed for the reasons given by Potter L.J. I would only add that I accept that there can be cases where the risk of persecution arises from a mixture of political and criminal reasons, particularly in a society such as Columbia currently is, where criminal economic activity may support political structures. But it is wrong to assume that all actions aimed at preventing the exposure of criminal activities in such a society can be characterised as imputing a political opinion to the witness. These matters need to be looked at on a case by case basis. In the present case, the Special Adjudicator found that the commanding officer:

> "was concerned to silence the appellant in order to avoid the consequences of criminal prosecution if his activities were exposed ... I was not satisfied that any general political opinion could be imputed to [the appellant] along the lines of his being on the side of law and order and against the "dark forces" of guerrillas and criminal gangs."

47. The Special Adjudicator clearly applied her mind to the specific facts of the present case.

48. In the light of those findings, I can see no basis on which it can properly be said that the I.A.T. went wrong in law.

Mr Justice Sumner:

49. I have had the advantage of reading the judgments of Lord Justice Potter and Lord Justice Keene. I agree with them and have nothing to add.

Order: appeal dismissed with costs, not to be enforced without leave of the court; public funding costs assessment for the appellant; written submissions to be sent to the court regarding permission to appeal to the House of Lords.

(Order does not form part of the approved judgment)