Federal Court Cour fédérale

Date: 20250123

Docket: IMM-5715-23

Citation: 2025 FC 138

Ottawa, Ontario, January 23, 2025

PRESENT: Mr. Justice Sébastien Grammond

BETWEEN:

FABRICE LIONEL NANAN

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

[1] Mr. Nanan, a citizen of Côte d'Ivoire, is seeking judicial review of a decision by the Immigration Division [ID] declaring him inadmissible to Canada and ordering his removal. On the basis of paragraphs 34(1)(c) and 34(1)(f) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act], the ID concluded that it had reasonable grounds to believe that Mr. Nanan had been a member of the Congrès panafricain des jeunes patriotes [COJEP] [Pan-

African Congress of Young Patriots], an organization that engaged in acts of terrorism during the period following the 2010 presidential elections.

[2] I find that the ID's decision is reasonable. The ID correctly understood that specific intent to cause death or serious bodily injury is an essential element of a finding of terrorism. Given the evidence, it was open to the ID to conclude that there were reasonable grounds to believe that COJEP had such an intent during the violent events that followed the 2010 elections. Moreover, the ID's conclusion that Mr. Nanan was a member of COJEP was reasonably supported by the evidence.

[3] The application for judicial review will therefore be dismissed.

I. Background

[4] Mr. Nanan came to Canada in 2019 and claimed refugee protection in 2021. He then stated that he had been a member of the Coordination des Jeunes de San Pédro [the Coordination], affiliated with COJEP, a youth movement led by Charles Blé Goudé. In his Basis of Claim Form [BOC Form] and at his hearing before the ID, Mr. Nanan explained that COJEP was linked to Laurent Gbagbo, who was president of Côte d'Ivoire from 2000 to 2011. He also stated that he was the nephew of President Gbagbo's wife.

[5] To lay the groundwork for a better understanding of what follows, I will first describe some aspects of the political context in Côte d'Ivoire during the period from 2000 to 2011 and then summarize the evidence relating to Mr. Nanan's involvement in COJEP.

A. *The Events in Côte d'Ivoire From 2004 to 2011*

[6] In the early 2000s, Côte d'Ivoire was divided by a conflict pitting the predominantly Christian south (where President Gbagbo comes from) and the primarily Muslim north against each other. This conflict prompted international peacekeeping efforts, such as the United Nations Operation in Côte d'Ivoire [UNOCI] and Opération Licorne led by France. President Gbagbo's movement viewed these deployments in a negative light. It was in that context that Mr. Blé Goudé, COJEP's leader, called on young people to take to the streets against what he saw as a foreign occupation. In November 2004, the situation escalated when COJEP members attacked several facilities connected with the peacekeeping forces and the offices of opposition parties and newspapers. This outbreak of violence cost many lives and resulted in the evacuation of many foreign nationals.

[7] In January 2006, violence resumed when the National Assembly's constitutional mandate ended. Mobs targeted UNOCI and humanitarian organizations, and barricades were erected in several cities across southern Côte d'Ivoire. The documentary evidence presented by the Minister, however, does not identify acts of deadly violence attributable to COJEP during that period.

[8] Presidential elections were held in October 2010. The electoral commission announced the victory of candidate Alassane Ouattara, associated with northern Côte d'Ivoire, and this victory was confirmed by foreign observers. President Gbagbo nevertheless refused to concede victory. In December 2010, President Gbagbo's supporters launched a violent campaign to keep

him in power, during which more than 3,000 people were killed. Acts of torture, forced disappearances, rapes and gang rapes were also reported by various international organizations and media outlets. In the south, violence was directed toward pro-Ouattara neighbourhoods, and more generally West African immigrants and Northern Ivorians.

B. *Mr. Nanan's Involvement in COJEP*

[9] In his testimony, Mr. Nanan described his work at the Coordination as mobilization efforts in support of President Gbagbo. In his BOC Form, he wrote that he had been a militant with the Coordination from 2009 to 2019 and mentioned that he had been, [TRANSLATION] "following the turbulent elections of 2010 . . ., an active sympathizer with the COJEP political movement". He also explained that he had organized [TRANSLATION] "attractive demonstrations" and that he had received funds to organize activities encouraging the people to vote for President Gbagbo. He added that the Coordination did not go [TRANSLATION] "unnoticed" in the city of San Pédro.

[10] At his hearing before the ID, Mr. Nanan again admitted to having been the coordinator of the Coordination and a COJEP sympathizer from 2009 to 2019. He explained that during the 2010 presidential elections, the Coordination had been solicited and funded by COJEP to increase its visibility by organizing sporting and cultural activities for young people. Mr. Nanan also specified that he had organized political marches in the streets of San Pédro.

C. *The ID's Decision*

[11] The ID determined that it had reasonable grounds to believe that COJEP had engaged in terrorism during the post-electoral period of 2010–2011 and that Mr. Nanan had been a member of that group. It therefore declared him inadmissible to Canada and issued a removal order against him.

[12] The ID first held that Mr. Nanan had been a member of COJEP within the meaning of paragraph 34(1)(f) of the Act. Relying on Mr. Nanan's testimony, it found that the Coordination and COJEP were in fact one and the same organization. Next, it analyzed the factors of the membership test set out in *B074 v Canada (Citizenship and Immigration)*, 2013 FC 1146 [*B074*], and concluded that Mr. Nanan's electoral propaganda activities, his significant and active support for COJEP's political objectives and his 10 years of involvement constituted reasonable grounds to believe that he had been a member of COJEP.

[13] The ID then considered the nature of the acts COJEP committed. It found that there was insufficient evidence to conclude that COJEP engaged in terrorism in 2004 and 2006. However, with respect to the post-electoral period of 2010–2011, it determined that the documentary evidence established that COJEP had engaged in terrorism because it had consciously participated in serious acts of violence against the civilian population, with the intention of challenging President Ouattara's electoral victory. COJEP's leader, Mr. Blé Goudé, had called for violence against [TRANSLATION] "foreign nationals", and COJEP members had followed suit by erecting barricades that facilitated the commission of violent crimes and by breaking into the

homes of pro-Ouattara sympathizers to attack them. The ID was of the view that the acquittal of Messrs. Gbagbo and Blé Goudé by the International Criminal Court on charges of crimes against humanity was not determinative, as that court was considering a different legal issue.

II. Analysis

[14] I am dismissing Mr. Nanan's application because the ID's decision is reasonable. To establish this, I will first consider whether COJEP engaged in terrorism, and then whether Mr. Nanan was a member of COJEP.

A. *Is COJEP an Organization That has Engaged in Terrorism?*

[15] The first stage of the test is to consider whether COJEP engaged in terrorism within the meaning of paragraph 34(1)(c) of the Act. For the reasons that follow, I find that it was reasonable for the ID to decide that during the post-electoral period of 2010–2011, COJEP committed terrorist acts by attacking civilians to challenge the election of President Ouattara.

(1) Legal Principles

[16] What is terrorism? In *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, [2002] 1 SCR 3, the Supreme Court of Canada noted that terrorism is not defined anywhere in the Act, and there is no single definition of the concept in international law. At paragraph 98 of its decision, the Court nevertheless ruled that the following definition sufficiently circumscribed acts that the international community generally considered to be terrorist acts:

> [any] act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

[17] While the Supreme Court did not purport to provide a comprehensive definition of terrorism, this Court and the ID have often relied on this excerpt from *Suresh* in determining whether an organization has engaged in terrorism. In practice, this excerpt constitutes a non-exhaustive working definition of terrorism.

[18] This Court and the ID have also occasionally turned to the definition of "terrorist activity" found in section 83.01 of the *Criminal Code* to help delineate the meaning of the concept of terrorism in paragraph 34(1)(c) of the Act. In *Rana v Canada (Public Safety and Emergency Preparedness)*, 2018 FC 1080, [2019] 3 FCR 3 [*Rana*], however, my colleague Justice John Norris warns against using section 83.01 for this purpose. He notes that the concept of "terrorist activity" does not constitute, on its own, the definition of a criminal offence, and that its scope is wider than that of the definition put forward in *Suresh*. That said, the difference between the *Suresh* definition and that of section 83.01 has no bearing on this case. I will therefore say nothing further in this regard.

[19] Whether we look at the issue through the lens of *Suresh* or section 83.01, there is consensus to the effect that proof of specific intent to cause death or serious bodily injury is an essential element of the definition of terrorism: see, for example, *Talukder v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1489 [*Talukder*]; *Rana*, at paragraph 66. In

criminal law, specific intent requires “a heightened mental element”, which entails “an intent to bring about certain consequences that are external to the *actus reus*”: *R v Tatton*, 2015 SCC 33 at paragraphs 28 and 35, [2015] 2 SCR 574. The required mental state goes beyond an “awareness of the likelihood that [certain outcomes] will occur, or a recklessness or wilful blindness to their resulting from conduct, even violent conduct”: *Chowdhury v Canada (Citizenship and Immigration)*, 2022 FC 311 at paragraph 12 [*Chowdhury*].

[20] In *Béké v Canada (Citizenship and Immigration)*, 2022 FC 1489 at paragraph 29, my colleague Justice Yvan Roy explains how this specific intent requirement applies in the context of paragraph 34(1)(c) of the Act:

> . . . it is the specific intention to cause death or seriously injure that makes an act terrorist in nature, insofar as the purpose of the act is to intimidate a population or compel a government or international organization to do or not to do something. But leading up to the purpose of the action, which is intimidation or coercion, the alleged act has to be intended to cause death or seriously injure.

[21] Justice Roy goes on to note that to establish a specific intent to cause death or serious bodily injury, it is not enough to show a general intent to use violence:

> Not all acts of violence are acts of terrorism, in the same way as any act intended to cause death or seriously injure can be carried out without the purpose of intimidation or coercion. Both are needed: an act intended to cause death or seriously injure, and the purpose of this act has to be to intimidate the population or to compel a government or international organization.

[22] Moreover, an inadmissibility hearing is not a criminal trial. The burden of proof is different. Section 33 of the Act states that it is enough to have reasonable grounds to believe that

one of the situations described in section 34 has occurred. The Supreme Court described this burden as requiring more than “mere suspicion”, but less than proof on the balance of probabilities: *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at paragraph 114, [2005] 2 SCR 100 [*Mugesera*]. The belief that a terrorist act has been or will be committed must therefore have “an objective basis . . . which is based on compelling and credible information”: *Mugesera* at paragraph 114.

[23] Applying these principles can be problematic in the context of allegations that a large organization has engaged in terrorism. In my opinion, it is on this precise point that the members of this Court have adopted different approaches. I will try to set out my own understanding of this issue succinctly. When considering whether an organization has engaged in terrorism, it is the mental state of its directing minds that is relevant: *Foisal v Canada (Citizenship and Immigration)*, 2021 FC 404 at paragraphs 21–22 [*Foisal*]. It is not enough to show that a subordinate member had the intent to kill somebody.

[24] To prove the required mental state, it is not necessary to bring evidence that the leaders of the organization made public statements expressly inciting murder. It is possible to rely on circumstantial evidence. However, the consequences of an act cannot suffice to prove specific intent, lest we fall in circular reasoning. In other words, the fact that people have died in the course of a protest movement or demonstration does not mean that the organizers of the event had the specific intent to cause death.

[25] In my opinion, in order to respect the legal constraints imposed above, the decision maker must analyze the full context to determine whether there are reasonable grounds to believe that the leaders of the organization had the specific intent to cause death or serious bodily injury. In *MN v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 796 [*MN*], I proposed four non-exhaustive factors that may be relevant to this analysis:

> (1) the circumstances in which violent acts resulting in death or serious bodily harm were committed;
>
> (2) the internal structure of the organization;
>
> (3) the degree of control exercised by the organization's leadership over its members; and
>
> (4) the organization's leadership's knowledge of the violent acts and public denunciation or approval of those acts.

(2) Specific Intent

[26] Mr. Nanan submits that the ID did not really apply the specific intent test when it concluded that COJEP had engaged in terrorism in 2010–2011. To assess this claim, I will start by summarizing the main points of the ID's decision on this issue.

[27] The ID began its analysis by reviewing the documentary evidence regarding the calls to violence issued by Mr. Blé Goudé, COJEP's leader, starting in 2004. In particular, it cited a Human Rights Watch report highlighting Mr. Blé Goudé's role in the outbreak of violence that followed the 2010 elections and stating the following:

> The targeted killings, enforced disappearances, politically motivated rapes, and persecution of West African nationals over a three-month period demonstrate a policy of systematic violence by

> security forces under the control of Gbagbo and militias long loyal to him.

[28] At paragraph 41 of its reasons, the ID concluded this part of its analysis with the following comments:

> In the panel's opinion, the objective documentary evidence establishes that COJEP leader Blé Goudé personally and publicly encouraged and incited his activists to commit acts of violence. In the panel's view, the COJEP leader's statements establish that the organization incited its supporters to violence and therefore met the applicable jurisprudential requirement, namely, the specific intent to cause death or serious bodily injury, as will be seen below.

[29] The ID went on to highlight Mr. Blé Goudé's and COJEP's role in supporting President Gbagbo's regime. It also noted that COJEP members were financed by the state and protected by the armed forces. It concluded that there were "intrinsic links" between the Gbagbo regime and COJEP.

[30] The ID then examined the violent actions in which COJEP participated between 2000 and 2011. It concluded that the ransacking of the offices of certain institutions and the riots that resulted in several dozen deaths in November 2004 did not constitute terrorism because, according to one informed observer, it was a period during which [TRANSLATION] "everyone lost it". As for the January 2006 demonstrations, the ID noted that the evidence did not support "the conclusion that COJEP committed acts intended to kill or seriously injure civilians".

[31] The ID did, however, conclude that the violent acts committed during the 2010 post-election period could be characterized as terrorist acts. Relying on reports from Human Rights

Watch, Amnesty International and the International Crisis Group, the ID noted that the violence escalated and took on a new dimension, involving a strategy of terror in order to maintain President Gbagbo in power. Moreover, the ID noted that the evidence clearly showed the involvement of the "Jeunes patriotes" or COJEP in the many murders of foreign nationals or suspected supporters of President Ouattara. It also cited the public calls to violence issued by Mr. Blé Goudé in February 2011, calls that were heeded and that gave rise to a new wave of killings.

[32] At paragraph 68 of its reasons, the ID concluded its analysis as follows:

> The panel considers that the objective documentary evidence demonstrates that COJEP's "Jeunes patriotes" committed terrorist acts during the 2010 post-election period. The "Jeunes patriotes," encouraged by their leader, committed serious acts aimed at terrorizing the civilian population. They set up numerous roadblocks in the cities to control and impede the free movement of citizens, enabling them to commit various crimes, including aggravated assault, rape and murder. They also broke into the homes of civilians suspected of being pro-Ouattara to commit serious assaults, rapes and murders, sometimes with the complicity of the security forces. Such acts meet the definition of terrorism in *Suresh*.

[33] Mr. Nanan relies mainly on the use of the expression "incite . . . violence", particularly at paragraph 41 of the ID's reasons, which is reproduced above. As I wrote in *Foisal*, at paragraph 17, not all forms of incitement to violence amount to an intent to cause death or serious bodily injury. In this case, however, the ID did not confuse the concepts of violence and terrorism. When the ID's reasons are read as a whole in light of the main evidence on which they are based, it is clear that it applied the correct test and concluded that there were reasonable

grounds to believe that Mr. Blé Goudé and COJEP intended to cause the death of many people during that dark period.

[34] There is absolutely no doubt that the ID's conclusions in this respect are supported by the evidence. It is clear that the violence of the post-electoral period was the result of a great deal of preparation and planning. As of January 2011, Human Rights Watch stated that the militias supporting President Gbagbo, particularly the "Jeunes patriotes", were committing extrajudicial executions, acts of torture and rapes. COJEP's leadership, including Mr. Blé Goudé, could not have been ignorant of what was happening. When the latter issued a call to his supporters, in late February 2011, the immediate result was increased violence on the ground.

[35] Mr. Nanan insists that in his public statements, Mr. Blé Goudé abstained from calling on his supporters to commit murder, but merely asked them to set up barricades and take similar measures. To prove an intent to cause death, however, it is not necessary that the group leader explicitly incited murder. In the context of the post-electoral crisis, it was reasonable for the ID to rely on Mr. Blé Goudé's public statements as evidence of the necessary intent, as these were preceded by weeks of deadly violence and did, in fact, result in an intensification of the violence. Indeed, Mr. Blé Goudé called on his supporters to [TRANSLATION] "denounce any foreigner" entering their neighbourhoods. How was this order to be interpreted, given that over the preceding weeks, the checkpoints established by COJEP had been the scene of many murders of nationals of neighbouring countries or sympathizers of President Ouattara? To give rise to reasonable grounds to believe that a terrorist act has been committed, it is not necessary for the call to murder to be explicit.

[36] Mr. Nanan criticizes the ID for taking into consideration events that occurred in December 2010 and January 2011, while relying on subsequent public speeches by Mr. Blé Goudé to establish the necessary intent. He submits that the intent must precede the acts. This argument is devoid of merit. Murders were committed before and after these public statements. The ID's decision and the evidence as a whole show that the outbreak of deadly violence began during the second round of the elections and escalated following statements made by Mr. Blé Goudé in February 2011.

(3) The Different Handling of the Events of 2004–2006 and Those of 2010–2011

[37] Mr. Nanan also criticizes the ID for inconsistency on the basis that it drew different conclusions with respect to the events of 2004–2006 and those of 2010–2011. In his submission, the content of Mr. Blé Goudé's public speeches during those two periods was substantially the same: he was calling on his supporters to hold demonstrations and erect barricades.

[38] I find, however, that the ID did not commit any reviewable error when it considered the fundamental difference between the events of the two periods. As I noted above, the use of a certain degree of force or violence during a demonstration is not sufficient proof of the intent to cause death. This remains true even if the participants "lose it" and lives are lost as a result. Such an outcome, while profoundly shocking, does not suffice to retroactively prove the organization's intent to cause death.

[39] In light of the evidence, it was reasonable for the ID to reach different conclusions with respect to the events of 2004–2006 and those of 2010–2011. The ID rightly drew a distinction

between violent demonstrations that got out of control and an organized campaign of killings intended to terrorize the population.

[40] It is in this context that the excerpts of Mr. Blé Goudé's statements cited by the ID must be assessed. In both 2004 and 2011, he incited his supporters to engage in violence. What distinguishes the 2011 statements, however, is that they were made while COJEP members were already engaged in a murderous campaign designed to discourage any form of opposition to President Gbagbo. By way of these statements, Mr. Blé Goudé endorsed this campaign, thereby engaging the responsibility of the organization he was leading.

(4) Mr. Blé Goudé's Acquittal by the International Criminal Court

[41] Mr. Nanan submits that the ID's decision is unreasonable because it ignores the acquittals of Messrs. Gbagbo and Blé Goudé by the International Criminal Court with respect to the crimes against humanity with which they were charged in connection with the 2010–2011 post-election crisis. The ID noted that the International Criminal Court concluded that there was insufficient evidence to demonstrate the criminal responsibility of the two men beyond a reasonable doubt. It stated that "this case involves different legal issues, including the determination on the basis that there are reasonable grounds to believe that COJEP has engaged in terrorism".

[42] While the issue may have deserved more in-depth consideration, the ID's decision is reasonable. Even though the charges were different, it is true that certain factual issues before the ID had already been addressed by the International Criminal Court. Nonetheless, the ID was correct in pointing out that the standard of proof was fundamentally different.

[43] Indeed, when the standard of proof is beyond a reasonable doubt, "an inference of guilt drawn from circumstantial evidence should be the only reasonable inference that such evidence permits": *R v Villaroman*, 2016 SCC 33 at paragraph 30, [2016] 1 SCR 1000. In contrast, where the law requires only reasonable grounds to believe in a set of facts, it is possible to rely on circumstantial evidence from which more than one inference can be drawn: *R v Gunn*, 2012 SKCA 80 at paragraph 22. That is the case here: the evidence of the intent of Mr. Blé Goudé, in his capacity as COJEP's leader, is primarily circumstantial. It is entirely possible that such evidence would be insufficient to obtain a criminal conviction if it can give rise to more than one inference with respect to Mr. Blé Goudé's intent. However, in inadmissibility proceedings, the same evidence may well give rise to reasonable grounds to believe that COJEP engaged in terrorism.

[44] Mr. Nanan did not bring any specific aspect of the International Criminal Court's decision to the attention of the ID or of this Court. In the absence of more fulsome submissions on this point, the ID did not need to perform a more detailed analysis of the issue, nor am I required to do so.

(5) The Organization's Intent

[45] In *MN*, I suggested a number of factors that may help determine whether an organization has engaged in terrorism. In *Foisal*, I added that it was possible to draw inspiration from the principles governing the criminal liability of organizations, particularly the principle that this liability is associated with that of their directing mind. Mr. Nanan submits that the ID misunderstood these principles in failing to analyze COJEP's specific intent as an organization.

[46] However, the ID's conclusions cited above show that it correctly applied the relevant principles to conclude that COJEP engaged in terrorism. It is undisputed that Mr. Blé Goudé was COJEP's directing mind. The ID was therefore correct to rely on his statements to conclude that COJEP had the requisite specific intent for a finding of terrorism.

(6) The Armed Conflict Exception

[47] Before this Court, Mr. Nanan also claimed that COJEP could not have engaged in terrorism during the post-electoral crisis of 2010–2011, as the latter constituted an armed conflict. He mainly relied on section 83.01 of the *Criminal Code*, which excludes from the definition of terrorist activity any act or omission that is "committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict". The *Suresh* definition also contains an exception relating to armed conflicts, even if its wording is less precise.

[48] It is well established that on judicial review, one may not submit arguments that were not raised before the administrative decision maker: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paragraphs 22–23, [2011] 3 SCR 654; *Tsleil-Waututh Nation v Canada (National Energy Board)*, 2016 FCA 219 at paragraph 78; *Merck Canada Inc. v Canada (Health)*, 2021 FCA 224 at paragraph 63.
Mr. Nanan did not raise the armed conflict exception before the ID. The ID's reasons are silent in this regard. Mr. Nanan's written submissions to the ID did not address this issue. They merely state, in general terms, that COJEP never engaged in terrorism, they blame other organizations

for the crimes of 2010–2011 and they heavily emphasize the acquittals of Messrs. Gbagbo and Blé Goudé by the International Criminal Court. Although Mr. Nanan used the expression [TRANSLATION] "latent armed conflict" to describe the period from 2002 to 2007, he did not draw any legal consequence from it. Thus, he has no basis for criticizing the ID for not having considered whether the armed conflict exception might have been applicable. The fact that the ID used the term "armed conflict" once in its reasons is of no import.

[49] In any case, the flimsy submissions that Mr. Nanan presented on this point are insufficient to allow me to deal with the issue adequately. The armed conflict exception raises several issues, such as whether the acts committed by COJEP were in accordance with international law. Given the evidence, it is difficult to imagine that this would be so. In any event, as this issue is not properly before me, I will not say anything further about it.

[50] Mr. Nanan also argued that, given its inquisitorial role, the ID should have considered the armed conflict exception on its own initiative and should have taken judicial notice of the armed conflict in Côte d'Ivoire. This submission is without merit. The distinction between an adversarial proceeding and an inquisitorial proceeding is often misunderstood. An adversarial proceeding implies two parties, who are responsible for framing the issues and bringing evidence. In an inquisitorial proceeding, there is often only one party, and the decision maker takes an active role in defining the scope of the dispute and gathering the evidence. Most proceedings before the Refugee Protection Division are inquisitorial. However, a proceeding before the ID is adversarial, as the cases before it involve two parties, namely, the Minister and the person concerned: *Chieu v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 at

paragraph 82, [2002] 1 SCR 84; *Thamotharem v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 198 at paragraph 43, [2008] 1 FCR 385. The principle that one may not raise new arguments on judicial review applies to decisions of the ID: *Mohamed v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 324.

B. *Was Mr. Nanan a Member of COJEP?*

[51] Having determined that the ID reasonably concluded that COJEP engaged in terrorism, I will now turn to the second stage of the analysis under paragraphs 34(1)(c) and (f) of the Act, namely, whether the ID's finding that Mr. Nanan had been a member of COJEP was unreasonable.

[52] I note that the Minister is not alleging that Mr. Nanan personally participated in the serious acts of violence perpetrated by COJEP. That is not a requirement of paragraph 34(1)(f), which targets members of *organizations* engaging in terrorism rather than the *individuals* engaging in such acts themselves: *Kanagendren v Canada (Citizenship and Immigration)*, 2015 FCA 86 at paragraphs 22 and 24, [2016] 1 FCR 428 [*Kanagendren*].

(1) Legal Principles

[53] The combined effect of sections 33 and 34 of the Act is sufficient to declare inadmissible an individual who has not themself engaged in the activities referred to in subsection 34(1) of the Act as long as there are reasonable grounds to believe that they were a member of an organization that engaged in such activities.

[54] Because the Act does not define the concept of “member”, one must turn to the case law to determine who belongs to an organization referred to in subsection 34(1). It is generally acknowledged that the concept of “member” must receive an “unrestricted and broad interpretation”, given the public safety and national security objectives of section 34: *Poshteh v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 85 at paragraphs 27–29, [2005] 3 FCR 487. It goes without saying that a formalistic understanding of membership would be ill adapted to the wide range of organizations referred to in subsection 34(1), which includes both established political parties and underground organizations. To this end, Justice Rothstein explained that many terrorist organizations are not “organized states or corporations where the niceties of agency law are applicable”, meaning that one cannot, for example, require the production of a membership card to establish membership: *Husein v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8831 at paragraph 5; see also *Sittampalam v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 326 at paragraphs 34, 36, 38 and 39, [2007] 3 FCR 198; *Mahjoub v Canada (Citizenship and Immigration)*, 2017 FCA 157 at paragraph 92, [2018] 2 FCR 344. A rigid definition would also be ineffective because individuals who wish to immigrate to Canada clearly benefit from hiding their membership in organizations referred to in subsection 34(1).

[55] Certain specific rules give effect to this flexible approach. First, if an individual admits from the outset to being a member of an organization, it is not necessary to carry the analysis any further: *Nassereddine v Canada (Citizenship and Immigration)*, 2014 FC 85 at paragraph 59, [2015] 2 FCR 63; *Darwisheh v Canada (Citizenship and Immigration)*, 2024 FC 98 at paragraph 11. If, however, as in this case, an individual does not admit to being a member of the

organization in question, the decision maker must conduct an analysis based on the *B074* factors. These factors are the nature of the person's involvement in the organization, the duration of their involvement and the degree their commitment to the organization's goals and objectives: *B074*, at paragraph 29. This last factor presupposes knowledge of these illegitimate goals and objectives: *Azizian v Canada (Citizenship and Immigration)*, 2017 FC 379 at paragraphs 37–38.

[56] The wording of section 33 of the Act, which sets out that the facts referred to in section 34 "include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur", implies that the period of membership need not coincide with the perpetration of the acts described in subsection 34(1): *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262 at paragraph 101, [2015] 4 FCR 162; *Al Yamani v Canada (Public Safety and Emergency Preparedness)*, 2006 FC 1457 at paragraphs 11–12. An individual may therefore be considered a member of an organization referred to in subsection 34(1) of the Act even if the organization in question engaged in prohibited acts before or after the individual's period of membership. The case law has nevertheless established one temporal exception, in that paragraphs 34(1)(c) and (f) of the Act do not apply if the prohibited acts that were committed after an individual has left an organization were not foreseeable at the time they were a member: *El Werfalli v Canada (Public Safety and Emergency Preparedness)*, 2013 FC 612 at paragraphs 61–78; *Chowdhury* at paragraphs 15–19; *Béké*, at paragraph 41; *Rahim v Canada (Citizenship and Immigration)*, 2024 FC 1971 at paragraph 16.

[57] Mr. Nanan submits that his membership in COJEP must be assessed according to the test set out by the Supreme Court in *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40,

[2013] 2 SCR 678 [*Ezokola*]. In that case, the Supreme Court held that for the purposes of section 35 of the Act or Article 1F of the *Convention relating to the Status of Refugees*, it was insufficient to demonstrate a form of "complicity by association" with respect to international crimes. Rather, the person concerned must have made a voluntary, knowing and significant contribution to the crimes committed by an organization. In *Kanagendren*, however, the Federal Court of Appeal held that the *Ezokola* test is not applicable to the definition of membership in an organization for the purposes of section 34 of the Act.

[58] I am aware that the flexible approach to establishing membership for the purposes of section 34 has given rise to criticism. It has been suggested that removing individuals who have only tenuous links to terrorist organizations may violate the *non-refoulement* principle arising from the *Convention relating to the Status of Refugees* and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Some suggest that such consequences could be avoided if the *Ezokola* test were applied to section 34. See, for example, Warda Shazadi Meighen and Steven Blakey, "Inadmissibility on Security-Related Grounds Under Section 34(1)(f) of the Immigration and Refugee Protection Act" in James C. Simeon, ed, *Serious International Crimes, Human Rights, and Forced Migration*, New York, Routledge, 2022; Didem Doğar, "Unrecognizing Refugees: The Inadmissibility Scheme Replacing Article 1F Decisions in Canada" (2023) 35 International Journal of Refugee Law 270; Jennifer Bond, Nathan Benson and Jared Porter, "Guilt by Association: Ezokola's Unfinished Business in Canadian Refugee Law" (2020) 39:1 Refugee Survey Quarterly 1. The Federal Court of Appeal may wish to reconsider *Kanagendren*, particularly in light of the principles established by the Supreme Court in *Canadian Council for Refugees v Canada (Citizenship and Immigration),*

2023 SCC 17, and *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21. In the meantime, however, I remain bound by *Kanagendren*.

(2) Reasonableness of the ID's Decision

[59] Mr. Nanan never denied his involvement in the Coordination during the presidential elections, which corresponds to the period directly preceding that during which the terrorist acts were committed. Furthermore, he admitted that the Coordination was, in fact, COJEP. The ID nevertheless chose not to characterize Mr. Nanan's testimony as an admission. Instead, it proceeded with an analysis of the *B074* factors.

[60] First, the ID analyzed the nature of Mr. Nanan's activities within COJEP. It held that the objective pursued by COJEP was maintaining President Gbagbo in power. The ID found that Mr. Nanan had engaged in electoral propaganda in favour of President Gbagbo by organizing festive demonstrations in San Pédro as well as sporting and cultural activities for young people. It concluded from this that Mr. Nanan's activities had advanced COJEP's political objectives.

[61] The ID then held that Mr. Nanan's commitment to COJEP's goals and objectives had been active and sustained. It noted the family relationship between President Gbagbo's wife and Mr. Nanan and his social status, which, in Mr. Nanan's own words, had helped him attract young people. The ID noted that Mr. Nanan had described himself as a "militant" and an "active sympathizer" of COJEP. Finally, the ID recalled that during the hearing, Mr. Nanan had admitted to learning about COJEP's demonstrations against UNOCI through the media and that he was therefore aware that COJEP was committing violent acts.

[62] The ID ultimately determined that Mr. Nanan had been a longstanding member of COJEP. Although he had tried to limit his involvement with COJEP to the 2010 electoral period, the ID found that Mr. Nanan had been a member of COJEP for 10 years, given his repeated assertion that he was the coordinator of the Coordination from 2009 to 2019 and his admission that the Coordination was COJEP.

[63] Mr. Nanan is asking this Court to overturn the ID's conclusions, on the basis that the ID erred in its assessment of the facts. He argues that the terms he used ("active sympathizer" and "militant") do not establish membership and that he did not truly know COJEP. Mr. Nanan states, for example, that he did not know the exact date at which COJEP was created.

[64] The role of a reviewing court is not to reweigh evidence. The Court intervenes only "where the decision maker has fundamentally misapprehended or failed to account for the evidence before it": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 126, [2019] 4 SCR 653. Having reviewed the evidence before the ID, I see no basis on which to intervene. The ID did not find that Mr. Nanan had admitted to being a member, so its use of the terms "active sympathizer" and "militant" were not determinative with respect to its analysis. Furthermore, in-depth knowledge of an organization is not relevant when it comes to establishing membership.

(3) Period of Membership

[65] Mr. Nanan submits that he left COJEP as soon as the elections were over and was therefore no longer a member when violence broke out during the post-electoral period. This

argument is without merit, given the ID's reasonable conclusion that Mr. Nanan had been a member of COJEP from 2009 to 2019. In doing so, it relied on the BOC Form, in which Mr. Nanan indicated that he had been a militant for the Coordination, and therefore COJEP, until August 2019. At the hearing before the ID, Mr. Nanan's he confirmed his membership in the Coordination until 2019 and acknowledged that the Coordination and COJEP were [TRANSLATION] "the same thing". Hence, the ID's finding regarding the period of membership was logically based on the evidence.

III. Conclusion

[66] The ID's decision is therefore reasonable. It was entirely reasonable to conclude that COJEP engaged in terrorism during the post-electoral period of 2010–2011, and that Mr. Nanan had been a member of COJEP from 2009 to 2019. The application for judicial review will therefore be dismissed.

[67] Mr. Nanan is asking me to certify three questions to be considered by the Federal Court of Appeal. In accordance with paragraph 74(d) of the Act, this Court may certify a "serious question of general importance", which would enable the Federal Court of Appeal to consider the issue. The Federal Court of Appeal has stated that for a question to be certified, it must be one "that is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance": *Lunyamila v Canada (Public Safety and Emergency Preparedness)*, 2018 FCA 22 at paragraph 46, [2018] 3 FCR 674.

[68] In my view, one of the proposed questions meets this test. In *Talukder*, this Court certified a question about the determination of the requisite intent to establish that an organization has engaged in terrorism. This case involves the same issue, although the organization differs. The question is determinative, in that it lies at the core of the judgment I am rendering today. I need not speculate as to how the Federal Court of Appeal will decide the issue or how Mr. Nanan might be affected if the Federal Court of Appeal were to adopt a test different from that applied by the ID. I need only note that the question is of general importance, given that it arises repeatedly and divides the members of this Court. I will therefore certify a question similar to that certified in *Talukder*, with the appropriate modifications.

[69] The other proposed questions do not warrant certification. The question about the effect of the judgment of the International Criminal Court is not a question of general importance. The situation is in fact a highly unusual one. The question regarding the armed conflict exception was not properly brought before this Court, nor would it be open to the Federal Court of Appeal to consider it. It is therefore not determinative.

JUDGMENT

THE COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. The following question is certified:

   Was the legal and analytical framework applied by the Immigration Division in this case to establish COJEP's specific intent to cause death or serious injury reasonable?

"Sébastien Grammond"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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