Federal Court Cour fédérale

Date: 20250124

Docket: IMM-11929-23

Citation: 2025 FC 139

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 24, 2025

PRESENT: Madam Justice St-Louis

BETWEEN:

ALI ALMEREAN ALDAW ALSHEIKH ALTAYEB

Applicant

and

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] On June 4, 2019, Aldaw Alsheikh Altayeb Ali Almerean, a Sudanese citizen, arrived in Canada and claimed refugee protection, alleging his fear of the then-ruling government in Sudan.

[2] On November 3, 2022, an officer prepared a report setting out the relevant facts under subsection 44(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act], and transmitted it to the Minister of Citizenship and Immigration [MCI]. The officer indicated that he had reasonable grounds to believe that Mr. Almerean was inadmissible under
(1) paragraphs 34(1)(b) and 34(1)(f) of the Act, having been a member of the National Congress Party [NCP] which came to power in Sudan through a coup d'état in 1989;
and (2) paragraphs 34(1)(b.1) and 34(1)(f) of the Act, having been a member of the NCP, an organization that there are reasonable grounds to believe engages, has engaged or will engage in an act of subversion against a democratic government, institution or process as they are understood in Canada.

[3] On the same day, pursuant to subsection 44(2) of the Act, a delegate from the MCI referred this report setting out the relevant facts to the Immigration Division [ID] for an admissibility hearing to determine whether Mr. Almerean was a person described in paragraphs 34(1)(b), 34(1)(b.1) and 34(1)(f) of the Act. Mr. Almerean's claim for refugee protection was then suspended.

[4] On September 7, 2023, the ID concluded that Mr. Almerean was inadmissible to Canada and issued a deportation order against him [Decision]. More specifically, the ID found that Mr. Almerean was inadmissible within the meaning of paragraphs 34(1)(b.1) and 34(1)(f) of the Act, for being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in an act of subversion against a democratic government, institution or process as they are understood in Canada. However, the ID found that Mr. Almerean was not inadmissible for being a member of an organization that there are reasonable grounds to believe

engages or has engaged in or instigates or has instigated the subversion by force of any government within the meaning of paragraphs 34(1)(b) and 34(1)(f) of the Act.

[5] Mr. Almerean is seeking judicial review of the portion of the Decision that found him inadmissible under paragraphs 34(1)(b.1) and 34(1)(f) of the Act. Mr. Almerean submits that the ID's decision was based on an erroneous finding of fact, made in a perverse manner and without regard to the evidence, and that the ID rendered an unreasonable decision by failing to consider the criteria established by the case law for a finding of inadmissibility on grounds of subversion.

[6] Mr. Almerean acknowledges that he was a member of the NCP, but specifically argues that the ID's decision was unreasonable because (1) it contains no analysis of the meaning of subversion, whereas the definition of forceful subversion should be used; (2) the characterization of "democratic process" may not be sufficient to engage paragraph 34(1)(b.1) of the Act; and (3) the criteria developed to interpret paragraph 34(1)(c) of the Act dealing with terrorism should apply to an analysis under paragraph 34(1)(b.1) and the ID erred in that regard because (a) it did not analyze the intention of the organization, the NCP, to commit the alleged acts; and (b) it was never alleged that Mr. Almerean was personally involved in the acts of subversion, or even that he had been informed of them, and therefore there was no common intention to commit the alleged acts of subversion.

[7] Mr. Almerean is asking the Court to set aside the Decision and refer the matter back to a differently constituted panel for a hearing *de novo*.

[8] The Minister of Public Safety and Emergency Preparedness [Minister] responds, in essence, that the ID's decision included a detailed analysis of the evidence and that its reasoning and its ultimate decision were reasonable.

[9] For the reasons that follow, Mr. Almerean's application for judicial review is dismissed. In short, considering the evidence before the ID and the applicable law, Mr. Almerean has not satisfied the Court of any serious shortcoming in the Decision that would require or warrant its intervention.

II. ID's decision

[10] For the purposes of its analysis, the ID first noted that it must determine (1) whether there were reasonable grounds to believe that Mr. Almerean was a member of the NCP; (2) if so, whether there were reasonable grounds to believe that the NCP instigated the subversion by force of a government; and (3) whether there were reasonable grounds to believe that the NCP had engaged in an act of subversion against a democratic government, institution or process as they are understood in Canada.

[11] The ID first noted that there were reasonable grounds to believe that Mr. Almerean was a member of the NCP from April 13, 2014, to August 19, 2018, which is not disputed in this case. Next, the ID concluded that the Minister had not demonstrated that there were reasonable grounds to believe that, in 1989, the NCP had instigated or engaged in the subversion by force of a government pursuant to paragraph 34(1)(b) of the Act.

[12] In response to the third question, which is at the heart of this application, the ID found that Mr. Almerean was inadmissible under paragraphs 34(1)(b.1) and 34(1)(f) of the Act as he was a member of the NCP from April 13, 2014, to August 19, 2018, and as there were reasonable grounds to believe that the NCP had engaged in an act of subversion against a democratic government, institution or process as they are understood in Canada. The ID noted, among other things, that:

- The Minister was correct in stating that elections in Sudan would be considered a democratic process as it is understood in Canada, including the pre-electoral and post-electoral processes, and that interference and criminal acts constitute subversion against a democratic process (Decision at para 28);

- The term “subversion” must be interpreted broadly and the burden of proof is much lower than that applicable in criminal matters (*Qu v Canada (Minister of Citizenship and Immigration)*, 2001 FCA 399) (Decision at para 28);

- The question of whether the organization engaged in subversion against a democratic institution and process is independent of Mr. Almerean’s period of membership since there is no temporal component to this question, other than the exceptions provided for in the case law (Decision at para 30 citing *Gebreab v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 1213 at para 23 [*Gebreab*]);

- The violations committed by the NCP during the 2010 elections, confirmed by the documentary evidence, constitute acts of subversion against a democratic institution

and process pursuant to paragraph 34(1)(b.1) of the Act, and the statements of Omar Al-Bashir, the leader of the NCP, in the weeks preceding the election demonstrated his intention to commit the alleged acts (Decision at paras 34, 42);

- The violations committed by the NCP in the 2015 elections, confirmed by the documentary evidence, constitute acts of subversion against a democratic institution and process pursuant to paragraph 34(1)(b.1) of the Act (Decision at para 47);

- The acts of the National Intelligence and Security Service [NISS], committed for the benefit of Mr. Al-Bashir's regime, demonstrated the party leader's intention to use all means to maintain his power over the country (Decision at para 45);

- The fact that there was no evidence of electoral interference in Mr. Almerean's electoral district is irrelevant to the ID's finding on the party's involvement (Decision at para 45);

- Mr. Almerean is wrong in asserting that there is no evidence that the NCP leadership intentionally acted in a way that compromised Sudan's 2015 elections: on the contrary, a significant number of documented violations aimed at limiting the ability of independent groups and activists to express their dissenting political views from those of the ruling party were reported; and

- Although Mr. Almerean was not involved in those violations and his decision to join the party in 2014 was made in the hope of helping his community, the evidence does not establish that there was a fundamental change in circumstances in the leadership of the NCP between the time Mr. Almerean joined the party and the

> national dialogue: on the contrary, the evidence shows that the 2015 national elections were marked by arbitrary arrests and insecurity, which prevented free, fair and transparent elections (Decision at para 45).

[13] Having determined that Mr. Almerean was inadmissible under paragraphs 34(1)(b.1) and 34(1)(f) of the Act, the ID issued a deportation order against him, pursuant to paragraph 229(1)(a) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [Regulations].

III. Analysis

A. *Standard of review*

[14] In light of the arguments raised by Mr. Almerean, the Court must determine whether Mr. Almerean has demonstrated that the ID's decision was unreasonable.

[15] Indeed, the Supreme Court has confirmed that the reasonableness standard applies to judicial review of an administrative decision (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23 [*Vavilov*]; see also *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 39). None of the situations justifying the rebuttal of the presumption confirmed by the Supreme Court arise in this judicial review (*Vavilov* at paras 25, 33, 53; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 at para 27).

[16] Thus, in order to succeed, Mr. Almerean must show that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and "any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100). The Court must adopt a position of judicial restraint considering the specialized expertise of the ID (*Vavilov* at paras 24, 75; *Alvarez v Canada (Public Safety and Emergency Preparedness)*, 2022 FC 185 at para 30).

B. *Statutory framework*

[17] The relevant provisions of the Act and Regulations read as follows:

Immigration and Refugee Protection Act, SC 2001, c 27	***Loi sur l'immigration et la protection des réfugiés***, LC 2001, ch 27
Inadmissibility	**Interdictions de territoire**
Security	**Sécurité**
34 (1) A permanent resident or a foreign national is inadmissible on security grounds for	**34 (1)** Emportent interdiction de territoire pour raison de sécurité les faits suivants :
. . .	. . .
(b) engaging in or instigating the subversion by force of any government;	b) être l'instigateur ou l'auteur d'actes visant au renversement d'un gouvernement par la force;
(b.1) engaging in an act of subversion against a democratic government, institution or process as they are understood in Canada;	(b.1) se livrer à la subversion contre toute institution démocratique, au sens où cette expression s'entend au Canada;
. . .	. . .

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b), (b.1) or (c).

f) être membre d'une organisation dont il y a des motifs raisonnables de croire qu'elle est, a été ou sera l'auteur d'un acte visé aux alinéas a), b), b.1) ou c).

Admissibility Hearing by the Immigration Division

Decision

45 The Immigration Division, at the conclusion of an admissibility hearing, shall make one of the following decisions:

. . .

(d) make the applicable removal order against a foreign national who has not been authorized to enter Canada, if it is not satisfied that the foreign national is not inadmissible, or against a foreign national who has been authorized to enter Canada or a permanent resident, if it is satisfied that the foreign national or the permanent resident is inadmissible.

Enquête par la Section de l'immigration

Décision

45 Après avoir procédé à une enquête, la Section de l'immigration rend telle des décisions suivantes :

. . .

d) prendre la mesure de renvoi applicable contre l'étranger non autorisé à entrer au Canada et dont il n'est pas prouvé qu'il n'est pas interdit de territoire, ou contre l'étranger autorisé à y entrer ou le résident permanent sur preuve qu'il est interdit de territoire.

Immigration and Refugee Protection Regulations, SOR/2002-227

Paragraph 45(d) of the Act — applicable removal order

Règlement sur l'immigration et la protection des réfugiés, (DORS/2002-227)

Application de l'alinéa 45d) de la Loi : mesures de renvoi applicables

229. (1) For the purposes of paragraph 45(d) of the Act,

229 (1) Pour l'application de l'alinéa 45d) de la Loi, la

the applicable removal order to be made by the Immigration Division against a person is	Section de l'immigration prend contre la personne la mesure de renvoi indiquée en regard du motif en cause :
(a) a deportation order, if they are inadmissible under subsection 34(1) of the Act on security grounds;	a) en cas d'interdiction de territoire pour raison de sécurité au titre du paragraphe 34(1) de la Loi, l'expulsion;

C. *Arguments raised by Mr. Almerean*

[18] As mentioned above, Mr. Almerean submits that the ID's decision was unreasonable, specifically since (1) there was no analysis of the meaning of subversion and the definition of subversion by force should have been used; (2) the characterization of "democratic process" may not be sufficient to engage paragraph 34(1)(b.1) of the Act; and (3) the criteria developed to interpret paragraph 34(1)(c) of the Act, which deals with terrorism, should apply to an analysis under paragraph 34(1)(b.1) and the ID erred since (a) there was no analysis of the organization's intention to commit the alleged acts; and (b) it was never alleged that Mr. Almerean was personally involved in the acts of subversion, or even that he knew of them, and therefore there was no common intention to commit the alleged acts of subversion.

(1) Failure to analyze the meaning of subversion and appropriate definition

[19] At paragraph 27 of his memorandum, Mr. Almerean submits that the ID did not clearly establish what it considers subversion to be, which renders the Decision unreasonable. In his opinion, the only reference in the Decision to what could be understood as an effort to establish what constitutes subversion is found in paragraph 28 of the Decision and reads as follows:

"[i]nterference and criminal acts can constitute subversion against a democratic process". Mr. Almerean submits that this is not a definition, whereas the ID's entire analysis should begin by establishing what is meant by the term "subversion", a term that is not defined by the Act.

[20] Mr. Almerean points out that this is particularly important since, in his view, the accepted definition of subversion is that found in *Canada (Citizenship and immigration) v USA*, 2014 FC 416 [*USA*] at paragraph 36.

[21] Mr. Almerean further points out that the case law dealing with subversion has analyzed the issue as the subversion of a government or power (*Oremade v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1077 [*Oremade*]; *Najafi v Canada (Public Safety and Emergency Preparedness)*, 2014 FCA 262) or change by illicit means or for improper purposes related to an organization (*Qu v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17132 (FC) at para 11 [*Qu FC*], aff'd 2001 FCA 399 at para 49 [*Qu FCA*]).

[22] Citing paragraph 47 of the Supreme Court of Canada's decision in *Dunsmuir v New Brunswick*, 2008 SCC 9, Mr. Almerean argues that the lack of a definition of subversion renders the Decision unreasonable; he adds that naming a list of acts committed during an election, as the ID did, was not enough. He argues that it should have been established whether or not such acts constituted subversion, which should have been clearly defined by the ID.

[23] In response, the Minister notes that the notion of subversion is defined in *Qu FC*, which the ID cites at paragraph 28 of its own decision; he adds that at paragraph 30 of the ID's decision, the ID notes that its role is to determine whether the organization engaged in acts of

subversion against a democratic institution, including the 2010 and 2015 electoral process. The Minister submits that the ID properly understood and applied the meaning of subversion under paragraph 34(1)(b.1).

[24] More specifically, and in response to paragraph 27 of Mr. Almerean's memorandum, the Minister submits that it is clear that the concept of subverting a government by force in paragraph 34(1)(b) of the Act does not apply in this case; the presidency and parliamentary majority in Sudan are both held by the NCP. The Minister adds that the NCP and Al-Bashir controlled the state apparatus, which is obviously not the case for those who oppose the government or commit terrorist acts. According to the Minister, the issue is whether, under paragraph 34(1)(b.1) of the Act, the actions of the NCP constitute subversion against a fundamental democratic process, namely choosing a head of state and a government in an election.

[25] The Court finds that Mr. Almerean's first argument cannot succeed. First, and as the Minister points out, the definition of subversion in paragraph 34(1)(b.1) of the Act cannot be the one suggested by Mr. Almerean and found in *USA* since that decision concerns subversion by force under paragraph 34(1)(b) of the Act, whereas the ID found Mr. Almerean inadmissible under paragraph 34(1)(b.1) of the Act.

[26] Moreover, the Court has already defined the concept of subversion at paragraph 49 of *Qu FC*. Subversion "connotes accomplishing change by illicit means or for improper purposes related to an organization". *Qu FC* was affirmed by the Federal Court of Appeal and this Court is therefore bound by it.

[27] Furthermore, and contrary to Mr. Almerean's submissions, the Court notes that the ID referred to *Qu FC* at paragraph 28 of its decision and everything indicates that it knew the meaning to be given to the term even though it did not explicitly mention it. The ID noted that the term subversion must be interpreted broadly and that the burden of proof is much lower than that which is applicable in criminal matters. Moreover, at paragraph 30 of its decision, the ID applied the definition in its analysis when it stated that elections in Sudan would be considered a democratic process within Canada's understanding of that expression, that those elections included the pre- and post-election phases and that interference and criminal acts can constitute subversion against a democratic process.

[28] Although Mr. Almerean pointed out at the hearing that *Qu FC* did not provide a clear definition, it was certainly reasonable for the ID to rely on that decision, affirmed by the Federal Court of Appeal, to set the parameters for its analysis. Thus, Mr. Almerean has not satisfied the Court that the ID failed to define subversion or that its interpretation of the term, or its application of it, was unreasonable.

[29] Moreover, and as the Minister points out in his memorandum, the notion of subversion in paragraph 34(1)(b.1) of the Act is distinct from the other grounds of inadmissibility in paragraphs 34(1)(b) and 34(1)(c) of the Act in view of (1) the legislative history of paragraph 34(1)(b.1); and (2) the different purposes of the inadmissibility ground set out in paragraph 34(1)(b) and, *inter alia*, the one set out in paragraph 34(1)(b.1).

[30] Inadmissibility under paragraph 34(1)(b.1) of the Act does not include the subversion of a government or the use of force, but rather subversion against a democratic government, institution or process as they are understood in Canada. Although the term “democratic institution” is not defined in the Act, the Federal Court of Appeal teaches us that it consists of a “structured group of individuals established in accordance with democratic principles, with preset goals and objectives who are engaged in lawful activities in Canada of a political, religious, social or economic nature” (*Qu FCA* at para 50).

[31] Thus, it does not seem appropriate or useful to apply the analytical framework surrounding paragraph 34(1)(b) to that surrounding paragraph 34(1)(b.1) when these inadmissibility grounds have distinct objectives, that is, the subversion by force of a government in the first case versus an act of subversion against a democratic institution, which includes the electoral process, in the second case (*Qu CAF* at para 44).

[32] In summary, the Court is satisfied that the ID did not fail to establish what it considered to be subversion, since it referred to *Qu FC*, which sets out a definition of that term, and that the ID demonstrated that it understood the meaning to be given to that term, since it noted the acts that constitute subversion in the circumstances of the case. The ID’s reasoning on this point thus bears the qualities of reasonableness (*Vavilov* at para 86).

(2) Qualification of the electoral process

[33] At paragraph 30 of his memorandum, Mr. Almerean appears to question whether elections that are corrupt or marred by irregularities can even be qualified as a democratic process or institution.

[34] The Minister replies that elections constituted a democratic process or democratic institution even in the presence of irregularities or corruption, otherwise there could be no subversion. He added that the quest for a [TRANSLATION] "Canadian standard" of democracy is not a criterion for analysis, because the actions taken are universally recognized as being illicit and aimed at improper purposes.

[35] The Court is satisfied that Mr. Almerean's second argument cannot succeed. Indeed, and as discussed at the hearing, it would be circular, at the very least, to consider that elections marred by irregularities and during which certain actors used illicit means cannot qualify as a democratic institution or process as provided for in the Act. The fact that there was subversion would have the effect of denying the very possibility of recognizing subversion, which would be paradoxical. In this case, the democratic institution is the electoral process, which includes the pre-election and post-election periods, as pointed out by the ID. The quest for a Canadian standard of democracy, and for elections in particular, is not a criterion.

(3) Appropriate analytical framework

a) *Intention of NCP, as a political party, to commit the alleged acts*

[36] On this third point, Mr. Almerean submits that the logic of paragraph 34(1)(f) of the Act is to hold the members of an organization accountable for its official policies or stated objectives,

since by being a member, he would be seeking to participate in those policies and objectives. Thus, according to Mr. Almerean, it is presumed that the member and his or her organization share a common intention to commit the alleged act. Relying on the analytical framework established in connection with subsection 34(1)(c) of the Act, Mr. Almerean adds that it is essential that there be a common intention for each of the paragraphs of subsection 34(1) that include subversion (citing *Oremade*).

[37] At paragraphs 34 to 36 of his memorandum, Mr. Almerean refers to the context of paragraph 34(1)(c) and to *MN v Canada (Public Safety and Emergency Preparedness)*, 2019 FC 796 [*MN*], and *Foisal v Canada (Citizenship and Immigration)*, 2021 FC 404 [*Foisal*], regarding participation in terrorist activities to assert that the courts have developed the test to be met by the Minister in order to discharge his burden of demonstrating an organization's intention and the specific intention of a member. Mr. Almerean adds that a distinction must be made between an organization's intentions and the actions of some of its members.

[38] At paragraph 37 of his memorandum, Mr. Almerean submits that the Minister was required to demonstrate that the NCP intended to commit acts that are considered to be acts of subversion. To that end, the ID had to analyze the circumstances of the alleged acts, the internal structure of the NCP, the degree of control between leaders and members, and the organization's knowledge and denunciation or approval of the alleged acts. However, according to Mr. Almerean, no analysis is done at this level.

[39] Mr. Almerean adds at paragraphs 38 to 42 of his memorandum that the vast majority of the excerpts from the objective evidence cited in the Decision do not refer to the party as having

engaged in or been responsible for the described abuses and that when the party is mentioned in the Decision as having engaged in them, the ID inadequately cited the evidence. In his opinion, the evidence therefore did not show that the NCP was involved in the alleged acts, and there is no evidence or reference to the structure of the party, the control between party leaders and their candidates, etc. Thus, Mr. Almerean argues that the evidence did not support a demonstration of criminal intent on the part of the party.

[40] Lastly, at paragraphs 43 to 45 of his memorandum, Mr. Almerean submits that the ID must, in its analysis of guilty intent, consider that the NCP is a major political party with thousands of members (citing *X (Re)*, 2021 CanLII 152784 (CA IRB); *X v Canada (Public Safety and Emergency Preparedness)*, 2022 CanLII 134801 (CA IRB)). Moreover, in his view, an analysis of the particular circumstances should have included this element, as well as the size and nature of the organization, in order to assess whether the reported acts were attributable to the party's leadership. He adds that a distinction must also be made between the party and the government, including its institutions such as the police and the army (citing *Udezi-nwokolo* as an example). Mr. Almerean concludes by asserting that there is no evidence that the NCP, as a party, intended to commit acts of subversion.

[41] In response to paragraphs 34 to 36 of Mr. Almerean's memorandum in which he cites *MN* and *Foisal* in support of his contention that the administrative tribunal must find that the organization's intention was to engage in terrorist acts, the Minister notes that those cases dealt with terrorism and the application of the definition in *Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1, and that they were not cases that dealt with subversion under paragraph 34(1)(b.1) of the Act.

[42] In this case, the Minister argues that the ID found that the statements of the leader of the NCP demonstrated the party's intention to subvert the 2010 and 2015 elections (citing paragraph 42 of the Decision). According to the Minister, contrary to the situation alleged in *MN* and *Foisal*, muzzling the opposition, activists, observers and the press during an election is not a legitimate intention or objective—the intention of the NCP and Al-Bashir was clear: to do everything in their power to remain in power by illegitimate and illicit means.

[43] In response to paragraphs 37 to 42 of Mr. Almerean's memorandum in which he criticizes the ID for not indicating whether it was the NCP, the authorities, the government or Al-Bashir's secret police, the NISS, who were responsible for the acts, the Minister essentially submits that Al-Bashir and the NCP controlled the state apparatus. Al-Bashir and the NCP he heads called for the use of illegitimate and illicit means to win both elections. The Minister adds that only the State can make arrests and detain people in detention facilities. Thus, according to the Minister, a study of the party's organization chart, or knowing who precisely within the government apparatus made a decision, would have been of no help to Mr. Almerean.

[44] In response to paragraph 43 of Mr. Almerean's memorandum, which cites an ID decision related to statements by the former first lady of Nigeria and acts of subversion by the Peoples Democratic Party of Nigeria, the Minister refers to paragraphs 30 and 31 of *X (Re)*, 2021 CanLII 152789, rendered by the ID on September 16, 2021, which found that electoral corruption came from the top of the NCP pyramid, namely from President Al-Bashir himself.

[45] Lastly, in response to paragraph 45 of Mr. Almerean's memorandum, the Minister points to the abundant evidence showing that the leaders of the NCP fomented, promoted and

encouraged acts of subversion against the electoral process. He emphasized that this was not an isolated maneuver inspired and fomented by local officials.

[46] First, contrary to Mr. Almerean's assertions, the Court is satisfied that the ID considered the NCP's intention to engage in subversion. Indeed, at paragraph 42 of its decision, which was about the 2010 national elections, the ID concluded that the electoral violations committed by the NCP constituted subversion against a democratic institution and process. The ID went on to point out that Al-Bashir's statements demonstrated an intention to engage in those acts of violation and that the objective evidence clearly supported the direct involvement of the NCP in acts of subversion against a democratic institution and process. This conclusion followed an analysis of the objective evidence by the ID, particularly at paragraph 35 of its decision dealing specifically with Al-Bashir's statements in the weeks leading up to the elections.

[47] Similarly, at paragraph 45 of its decision, which was about the 2015 national elections, the ID determined that the actions of the NISS, committed for the benefit of the Al-Bashir regime, demonstrated the intention of the NCP's leader to use all means to maintain his power over the country. The ID thus concluded that the objective evidence demonstrated that there were reasonable grounds to believe that the NCP had engaged in subversion against a democratic institution or process, that is, the national elections, thereby preventing free and fair elections. The ID added that the fact that there was no evidence of electoral interference in Mr. Almerean's electoral district was not relevant to its finding on the party's involvement.

[48] In this case, Mr. Almerean raised no error on the part of the ID other than alleging an absence of evidence that the NCP, as a party, intended to commit acts of subversion. The

excerpts from the objective evidence referred to by the ID in its decision explicitly mention the NCP, Al-Bashir and/or the NISS. The documentary evidence thus supports the ID's conclusion.

[49] Moreover, given that the NCP won a majority in the 2010 election and that it was in power in 2015, it goes without saying that any mention of the government inevitably refers to the NCP. Similarly, as pointed out by the Minister, Al-Bashir and the NCP controlled the state apparatus: it is therefore obvious that the actions taken by the NISS were necessarily carried out for the benefit of Al-Bashir and the NCP.

[50] Lastly, the Court notes that it is not for it to reweigh and reassess the evidence on judicial review (*Vavilov* at paras 99, 125).

b) *Mr. Almerean's intention*

[51] Relying again on the analytical framework developed under paragraph 34(1)(c) of the Act, Mr. Almerean argues that it was never alleged that he was personally involved in the acts of subversion or even that he was aware of the situation, and therefore it was not open to the ID to determine that he was inadmissible. Mr. Almerean adds that there was no evidence or allegation that incidents of subversion had occurred in his electoral district, and that only his membership in the political party linked him to that inadmissibility.

[52] Mr. Almerean reiterates that there was no evidence that the NCP, as a party, intended to act to commit acts of subversion and that the fact that he himself had been unaware of the unlawful acts and was never asked to act illegally in his constituency demonstrates that there were no party directives for criminal actions to be taken during the election. Mr. Almerean points

out that the evidence showed, on the contrary, that he wanted to participate in the national dialogue and to improve the lot of his community and of minorities in Sudan, and that this was what had motivated his foray into politics. He argues that his desire was clearly to participate in a democratic process and that this was why he had been expelled from the party in 2018. Thus, Mr. Almerean submits that he cannot be blamed for the acts committed by members of the government.

[53] The Minister replies that there is no doubt that Mr. Almerean was a member of the NCP and that he had represented the party in the Sudanese Parliament. The Minister notes that a finding that a person is a member of an organization is sufficient to trigger the application of paragraph 34(1)(f) and that there is no need to demonstrate that the person participated in or otherwise contributed to the subversive activities of the organization, in this case the NCP (*Tsegay v Canada (Citizenship and Immigration)*, 2023 FC 1263 at para 22).

[54] The Minister emphasizes that, in this case, it has been established that Mr. Almerean was a member of the NCP from 2014 until his expulsion from the party on August 19, 2018, and that this is not in dispute (referring to paragraphs 9 and 10 of the Decision). The Minister points out that, as stated in paragraph 30 of the Decision, the temporal component, namely, the timing of Mr. Almerean's membership in NCP, is not a relevant factor in this analysis.

[55] In light of the case law on this issue, the Court is satisfied that the ID reasonably concluded that, for the purposes of the determination under paragraphs 34(1)(f) and 34(1)(b.1), it was not relevant to establish whether or not Mr. Almerean was personally involved in the alleged acts. Indeed, as Justice Denis Gascon noted in *Canada (Public Safety and Emergency*

Preparedness) v Ukhueduan, 2023 FC 189 at paragraph 23, “a person’s admission of membership in an organization is sufficient to meet the membership requirement within the meaning of paragraph 34(1)(f) of the [Act], ‘[r]egardless of the nature, frequency, duration or degree of involvement’” (citing *Foisal* at para 11; see also *Khan v Canada (Citizenship and Immigration)*, 2017 FC 397 at para 31 [*Khan*]). Once membership is established or admitted, then it is membership for all purposes [see *Al Ayoubi v Canada (Citizenship and Immigration)*, 2022 FC 385 at paras 24–25, *Khan* at para 31).

[56] Thus, and as the ID pointed out at paragraph 30 of its decision, the issue as to whether the organization engaged in subversive acts against a democratic institution or process is independent of the period during which Mr. Almerean was a member of the NCP, as there was no temporal component in this determination (*Gebreab* at para 23). As an exception, temporality would be considered, for example, if membership in the organization occurred after the organization has undergone a fundamental change in circumstances, such as transforming itself, for example, into a legitimate political party and explicitly renouncing all forms of violence (*Muhemba v Canada (Citizenship and Immigration)*, 2023 FC 1207 at para 25, citing *Karakachian v Canada (Citizenship and Immigration)*, 2009 FC 948 at para 48).

[57] However, in this case, it is not disputed that Mr. Almerean was indeed a member of the organization during the national elections of 2010 and 2015 and there is no evidence that the aforementioned exception could have applied. The ID reasonably concluded that his intention or degree of involvement was irrelevant.

[58] Thus, the Court is satisfied that the ID reasonably concluded that it did not have to consider Mr. Almerean's intention specifically.

IV. Conclusion

[59] Mr. Almerean has not persuaded the Court that the ID failed to consider the criteria established by the case law when it found that he was inadmissible under paragraphs 34(1)(b.1) and 34(1)(f) of the Act. The ID used the appropriate analytical framework and, in view of the evidence on the record, it reasonably concluded that the Minister had met his burden of establishing that there were reasonable grounds to believe that Mr. Almerean was a member of the NCP and that that organization had engaged in subversion against a democratic government, institution or process, namely the national elections in Sudan in 2010 and 2015. The ID therefore reasonably concluded that Mr. Almerean was inadmissible. This application for judicial review is therefore dismissed.

[60] Neither party proposed a question of general importance for certification, and the Court is satisfied that none arises in the circumstances.

JUDGMENT in IMM-11929-23

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. There are no questions for certification.

3. There will be no order as to costs.

"Martine St-Louis"
Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

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