Federal Court  Cour fédérale

Date: 20250704

Docket: IMM-13810-23

Citation: 2025 FC 1195

Ottawa, Ontario, July 4, 2025

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Applicant

and

LUIS HERNEY MELO LEGUIZAMO

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of the Immigration Appeal Division's [IAD] decision dismissing the Applicant's appeal from the Immigration Division [ID] and finding the Respondent not inadmissible to Canada under paragraphs 34(1)(f) and 34(1)(b.1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], dated October 18, 2023 [the Decision].

II. Background

[2] The Respondent is a citizen of Colombia. He entered Canada in February 2019 and made a refugee claim with his family. During his port of entry interview and in his basis of claim form, he admitted that he was employed by the Administrative Department of Security of Colombia [DAS] between 1998 and 2003.

[3] The Applicant is the Minister of Public Safety and Emergency Preparedness [the Applicant or the Minister].

[4] DAS was a government organization founded in 1953 by the military government in Colombia. The Applicant claims that after 2003, DAS's operations involved clandestine, widespread, and illegal activities against various individuals and entities within Colombia's political system, all acting at the behest of the then President Alvaro Uribe Velez [President Uribe]. DAS was dismantled in 2011.

[5] As a result of the Respondent's admission about his DAS involvement, a section 44 inadmissibility report [the Inadmissibility Report] was written against him and referred to the ID for an admissibility hearing. The basis of the Inadmissibility Report was that the Respondent was inadmissible to Canada on grounds of security 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" under paragraph 34(1)(b.1) of the *IRPA*, by way of paragraph 34(1)(f).

[6] On July 28, 2022, the ID found the Respondent to not be inadmissible to Canada under paragraphs 34(1)(b.1) and 34(1)(f) [the ID Decision]. The ID determined that the Applicant failed to establish reasonable grounds to believe that DAS engaged in acts of subversion against a democratic institution or process as they are understood in Canada.

III. Decision

[7] On appeal, the IAD agreed with the ID. The IAD followed the Federal Court of Appeal's guidance in *Qu v Canada (Minister of Citizenship and Immigration) (CA)*, 2001 FCA 399 [*Qu*]. *Qu* prescribed a two-step approach for determining inadmissibility under former subparagraph 19(1)(f)(i) of the legislation, which is similar to the current paragraph 34(1)(b.1) of the *IRPA* but included the additional term "espionage" (*Qu* at para 34). The decision-maker must first consider the status of the entity that the Minister alleges was a victim of subversion, to determine whether that organization is a democratic government, institution, or process.

[8] Within the "democratic institution" section of the Decision, the IAD found that the Minister did not adduce sufficient evidence of the establishment, leadership, structure, goals, and activities of these organizations to show that they met the relevant "criteria" in *Qu*.

[9] The Applicant had argued that the Colombian Judiciary could be classified as "a democratic government," but the IAD decided that the judiciary could not be considered part of the Colombian "government." Regarding subversion of a "democratic process," the IAD found that the Applicant did not submit sufficient evidence to prove a defined democratic process.

[10] The IAD therefore dismissed the appeal and did not go on to consider the second step of the *Qu* approach – whether the acts committed by DAS constituted "subversion."

IV. Agreed Facts and Context

[11] The parties agree on many of the relevant facts.

[12] The parties agree that the Respondent is a foreign national and former member of DAS, and that DAS is an organization as contemplated by paragraph 34(1)(f) of the *IRPA*.

[13] Further, the Applicant did not allege that the Respondent personally engaged in or was complicit in the commission of any wrongful act. Rather, they claimed that the Respondent is inadmissible under paragraph 34(1)(f), which provides that "[a] permanent resident or a foreign national is inadmissible on security grounds for… (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)." Therefore, the dispute centres around whether there are reasonable grounds to believe that DAS engaged in the acts referred to in paragraph 34(1)(b.1): did DAS engage "in an act of subversion against a democratic government, institution or process as they are understood in Canada"?

[14] The parties agree that DAS targeted entities and individuals who were considered opponents of President Uribe's policies and governance, including parliamentarians, the Vice-President and other high ranking government officials; political opposition leaders; human rights advocates and organizations; journalists, trade unions, and judges from the Constitutional Court

and the Supreme Court of Justice. DAS's activities included: (i) wiretapping of phones and internet lines; (ii) conducting unauthorized surveillance including on judges; (iii) information theft upon breaking into offices/homes; (iv) sabotaging and discrediting the work of human rights activists using smear campaigns; (v) harassment and threatening, including direct threats of sexual violence; and (vi) extrajudicial executions.

[15] These activities were carried out using informal structures created by high-ranking DAS officials. The informal structures provided an appearance of legality and facilitated DAS' ability to use state resources to obtain and exchange information, and to carry out its illegal activities.

V. Issues and Standard of Review

[16] The issues, as framed by the parties, are as follows:

1. Whether the IAD erred in its interpretation of "a democratic government, institution, or process as they are understood in Canada" in paragraph 34(1)(b.1) of the *IRPA*.
2. Whether the IAD erred in determining that the alleged victims of subversion were not democratic governments, institutions, or processes as they are understood in Canada.
3. Whether the IAD erred by not addressing "subversion" in the Decision.

[17] The parties agree that the standard of review is reasonableness and rely on the guidance from the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

VI. Summary of Findings

[18] I find that the IAD erred regarding the second issue.

[19] The IAD did not reasonably justify why the Colombian entities put forward as having been targeted by DAS were not democratic governments, institutions, or processes. The IAD's reasoning is internally inconsistent and imports legal criteria not reasonably supported by the statute or case law. Further, the IAD failed to explain why the Applicant's evidence and submissions were insufficient to establish that the alleged victim government and processes were not democratic. This issue is determinative of the application.

VII. Analysis

[20] The Applicant contends that the IAD made the following errors:

- They provided an unreasonable interpretation of paragraph 34(1)(b.1) of the *IRPA*, failing to take into account its broad and expansive nature.
- Their interpretation was internally inconsistent, applying different standards to Canadian and Colombian institutions.
- They applied an unreasonably high threshold well beyond "reasonable grounds to believe" to the evidence to find that the Minister's submitted entities did not meet the definition of "democratic government, institution or process as they are understood in Canada."
- They did not address "subversion" in any way, nor whether the evidence demonstrated that any subversion had taken place.
- They ignored or failed to consider the voluminous evidence submitted by the Minister in their materials.

[21] According to the Applicant, the IAD "misses the big picture in this case" – that the purpose of DAS's activities was to undermine the political opponents of one specific Colombian president for the purpose of maintaining his power. The democratic government, institutions, and processes that were being subverted were Colombia's established political system of a multiparty democracy, an impartial and independent judiciary, as well as its civil society that permits the free association of labor unions, non-governmental organizations [NGOs], and a free press.

[22] The Applicant asserts that section 34 of the *IRPA* has long been recognized as addressing the Act's objective in paragraph 3(1)(i) of promoting international justice and security by fostering respect for human rights and by denying persons who are criminals or security risks access to Canada. It is for this reason that paragraph 34(1)(b.1) – like other inadmissibility provisions related to human rights violations, security, and criminality – has been given a broad and unrestricted interpretation by the courts.

[23] In response, the Respondent's memorandum explains the importance of the qualifying word "democracy" in the interpretation of paragraph 34(1)(b.1) of the *IRPA*:

> Section 34(1)(b) of the *IRPA* provides that a person may be found inadmissible for engaging in "subversion by force of any government". Acts of subversion against non-democratic regimes may make a person inadmissible if the acts of subversion include the use of force. Section 34(1)(b.1) considers acts of subversion that do not include the use of force. Section 34(1)(b.1) is also unlike section 34(1)(b) in that it distinguishes between "democratic" and un-democratic institutions. If the use of force is not alleged, the "democratic" nature of the organization being targeted must be scrutinized.

[24] They state that the leading case on the meaning of the term “democratic” in this context is the decision of the Federal Court of Appeal in *Qu*. The Minister’s onus was to identify the alleged victim organizations in issue, and to demonstrate that the structure, aims, and activities of the organizations meet the requisite criteria from *Qu* of a “democratic” government, institution, or process:

> i. A structured group of individuals;
>
> ii. Established in accordance with democratic principles;
>
> iii. With preset goals and objectives;
>
> iv. Engaged in lawful activities; and
>
> v. Which activities were of a political, religious, social or economic nature.
>
> (citing *Qu* at paras 50-51)

[25] According to the Respondent, because the Court of Appeal in *Qu* noted that the French version of the legislation translates the English words “government, institution, or process” to the single French word “institution démocratique” (*Qu* at para 32), the same “test” applies to each category in the provision. What must be shown is that the organization in issue has been “established in accordance with democratic principles” in order to “seek through democratic means to influence government policies and decisions.”

[26] Before the IAD, the Minister named over a dozen organizations alleged to be victims of crimes by DAS. The Respondent argues that the Minister made no submissions as to the structure, establishment, objectives, or activities of those organizations.

[27] I find that the IAD's interpretation of paragraph 34(1)(b.1) of the *IRPA* was internally inconsistent. They applied different standards to Canadian and Colombian institutions and imported legal criteria not reasonably supported by the statute or case law. Further, the IAD appears to have applied an unreasonably high threshold beyond "reasonable grounds to believe" to the evidence to find that the Minister's submitted entities did not meet the definition of "democratic government, institution or process as they are understood in Canada." Their sufficiency findings in this respect were not reasonably justified. I explain below how I come to these conclusions.

A. *Application of "Democratic Government" and "Democratic Process"*

[28] The IAD did not meaningfully assess as democratic governments or democratic processes several of the Applicant's proposed categories of victims.

[29] With respect to the IAD's categorization of certain organizations as "democratic institutions," the IAD followed *Qu*. In that case, the Federal Court of Appeal analyzed whether a Canadian university student group could be considered "democratic" as contemplated by paragraph 34(1)(b.1) of the *IRPA*.

[30] In the Decision at hand, the IAD's reasoning seems to suggest that all democratic governments, institutions, and processes must be established under a defined set of "*Qu* criteria." I do not agree that the Federal Court of Appeal's decision in *Qu* supports such a narrow reading – at least not in light of the IAD's failure to explain its position on this point.

[31] In *Qu*, the Court held that a democratic institution "must be applied to a wide range of associations or organizations of a political, religious, social or economic nature, with a wide variety of objects, as well as activity by which the objects may be pursued" (*Qu* at para 49 [emphasis added]). The Court did not propose a binding test for all democratic governments, institutions, and processes that must be proved with specific evidence. As demonstrated below, the IAD erred by mechanically applying the Federal Court of Appeal's reasoning in *Qu* to all organizations, entities, or processes alleged to be victims of subversion (*Vavilov* at para 113). The Court of Appeal's analysis of whether the student group in *Qu* was a democratic institution cannot be merely replicated and transposed onto organizations and processes with different objects and activities (*Qu* at para 49).

[32] According to the Applicant's IAD submissions, DAS's targets included the Colombian Judiciary, independent media in Colombia, human rights organizations, and opposition parties. They argued that these groups were attacked specifically because they challenged the undemocratic motives of President Uribe. The Applicant explained that, in response, DAS targeted them as institutions or governments, while undermining the democratic process as well.

[33] The IAD's restrictive paragraph 34(1)(b.1) approach is particularly evident in their discussion of the Colombian Judiciary. While recognizing that the judiciary is one of the three branches of democratic government in Canada, the IAD nonetheless found that it did not form part of the Colombian government. This conclusion was made despite evidence that Colombia, like Canada, is a constitutional, multi-party democracy with a functioning separation of powers and checks and balances between its three branches of government.

[34] The IAD appears to have reasoned that because the judiciary is not a part of the "executive branch" of government, it does not fall within the meaning of "democratic government" under paragraph 34(1)(b.1) of the *IRPA*. I find this interpretation unintelligible. The IAD failed to explain their reasoning or point to any legal or evidentiary basis for this conclusion. Paragraph 34(1)(b.1) refers to a "democratic government." It does not specify whether it is the legislative, executive, or judicial branch of government that must be subverted.

[35] Similarly, the IAD's reasoning that DAS's "targets were not within the government of Colombia" is flawed. Given that DAS was part of the Colombian government and its "actions were dictated by the government, for the government," the IAD found it "untenable" to accept that DAS would engage in acts of subversion against its own government by targeting the judiciary. This conclusion is illogical based on the IAD's own understanding that the judiciary is a branch of government but is separate and distinct from the executive branch. The Applicant had submitted that DAS – acting under the executive at the time – was targeting the judiciary because of Colombian judges' reluctance to accept the President's constitutional reform. The IAD Panel Member did not turn their mind to the Applicant's premise that the judiciary could be a victim of subversion by another branch of government that was acting undemocratically.

[36] Regarding whether the Colombian Judiciary could be considered a "democratic process," the IAD also failed to explain the legal basis for the rejection of this argument. The Panel Member first accepted the judiciary's role in maintaining democracy, freedom, and independent decision-making. However, they then concluded that the Minister's submissions fell short of establishing a democratic process:

> [the judiciary's] work while important for the functioning of democracy cannot generally be described as democratic processes as per subsection 34(1)(b.1) of the Act. The Appellant must identify specific democratic processes that were DAS's targets and adduce sufficient evidence to determine that they were in fact democratic processes as understood in Canada and the evidence before me falls short of demonstrating this.
>
> I acknowledge that the objective evidence mentions political rallies and Supreme Court investigations into corruption of congressmen who were allies of President Uribe. These in the ordinary sense of the word could be considered processes but it cannot be assumed that they are democratic in nature. Investigations into corrupt practices of congressmen may be necessary for government accountability and this certainly is important for democracy to properly function. However, they are not intrinsically democratic processes in nature.

[37] The IAD did not specify what evidence was missing or why the identification of a "specific democratic process" was required to establish a democratic process. Neither the wording of paragraph 34(1)(b.1) of the *IRPA*, nor any of the case law cited by the IAD, justifies the standard that the IAD applied.

[38] At the outset of their analysis, the IAD asserted that the Applicant's interpretation was "too broad for the purpose of a subsection 34(1)(b.1) analysis." However, as the Federal Court of Appeal held in *Qu*, and as the IAD cited earlier in the Decision, "[P]arliament intended that a broad meaning be given to the words in the provision" (citing *Qu* at para 33). The absence of more specific jurisprudential guidance on how to interpret this provision did not entitle the IAD to create their own set of criteria, especially since those criteria were not disclosed or justified (*Vavilov* at paras 108-113). As the Supreme Court of Canada wrote in *Vavilov*, "[t]hat administrative decision makers play a role, along with courts, in elaborating the precise content of the administrative schemes they administer should not be taken to mean that administrative

decision makers are permitted to disregard or rewrite the law as enacted by Parliament" (*Vavilov* at para 108).

[39] At the end of the Decision, the IAD explained that the Applicant's evidence was insufficient to establish "the structure, establishment, goals, and presets of the groups identified." It is unclear whether the Panel Member applied this test throughout the Decision or only for the organizations assessed under the "democratic institutions" heading in the Decision. These characteristics are indeed principles identified in *Qu* as constituting a democratic institution (*Qu* at paras 50-51). However, as explained above, the IAD did not justify their conclusion that they are legal criteria which, in all cases, must be established with "specific evidence" in order for a democratic government or process to be made out.

B. *Sufficiency Findings*

[40] For the IAD's finding that the Applicant failed to adduce sufficient evidence under the "reasonable grounds to believe" standard to establish democratic governments, institutions, or processes as they are understood in Canada, I find that the IAD erred by not explaining what evidence was missing and why that information was necessary for a positive finding.

[41] The IAD imposed an unreasonably high burden, greater than what is required by section 33 of the *IRPA*. The "reasonable grounds to believe" standard is a relatively low evidentiary threshold. It requires more than mere suspicion, but less than the balance of probabilities standard used in civil matters. It is met where there is an objective basis for the belief, based on compelling and credible information (*Egharevba v Canada (Public Safety and Emergency*

Preparedness), 2025 FC 1093 [*Egharevba*] at para 27; *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114).

[42] My conclusion on this point is reinforced by the IAD's findings of insufficiency, which failed to explain why the evidence did not meet the required threshold to establish that the Applicant's submitted entities and processes were democratic. While findings of sufficiency of evidence are generally afforded significant deference on judicial review, they must still be explained (*Clarke v Canada (Citizenship and Immigration)*, 2023 FC 680 at paras 25-26).

[43] The IAD's finding that the Applicant did not adduce sufficient evidence to establish the Colombian Judiciary as a democratic process appears to mirror their reasoning for rejecting DAS's attacks on NGOs, free and independent media, political rallies, and judicial investigations as showing evidence of a democratic process in Colombia. However, the only specific evidence the IAD identified as missing was in respect to "rallies":

> specific rallies should be identified. Details such as dates, locations and organisers of the events would be helpful for two reasons; first, to give the respondent the opportunity to respond; and second, to assist me with deciding whether they come within the meaning of democratic processes under subsection 34(1)(b.1) of the Act. I find a broad mention of Supreme Court investigations and political rallies is not sufficient for an analysis of this nature.

[44] I again question where these criteria are coming from. The IAD cited no legal authority to justify how the applicable standard of proof necessitates details about "specific rallies." In fact, the Applicant's evidence regarding political rallies was not submitted to prove that a rally itself is a democratic process. Rather, the Minister referenced political rallies in their submissions to show that DAS targeted political opponents, which "had the effect of attempting to overthrow

Colombia's traditional and established political system, where one achieves and maintains power through democratic means" [emphasis added]. By insisting that the Applicant disclose a specific democratic process, the IAD appears to have misunderstood the context of the Applicant's submissions. In this example, the political rally was not itself the "democratic process"; it was evidence tendered to show an attempt to undermine a democratic process.

[45] The IAD was also not satisfied that the Minister's proposed groups were engaged in lawful activities, nor that the processes identified were democratic in nature.

[46] The ID had accepted that the Colombian government is a democracy: "Colombia is a constitutional, multiparty democracy." The IAD did not explicitly state whether it also accepted this evidence. In any event, the Applicant put forward submissions and supporting materials indicating that Colombia is a democracy. By nature of that democracy, the logical inference is that organizations or processes connected to or adjacent to the political system would also be democratic. The IAD was not required to accept the Applicant's position, but under the reasonableness standard, they were required to adequately explain "the deficiency in the Applicant's evidence by pointing to the limitations in the evidence provided and what was missing therefrom" (*Amin v Canada (Citizenship and Immigration)*, 2023 FC 192 at para 27).

[47] The IAD cited *Singh v Canada (Citizenship and Immigration)*, 2014 FC 377 [*Singh*] for the proposition that a democratic government, institution, or process must be assessed in light of the legality of its activities. Where an organization engages in unlawful conduct, it cannot be considered democratic as understood in Canada.

[48] While it was reasonable for the IAD to consider *Singh*, they failed to explain how the findings in *Singh* applied to the facts of the case at hand. In *Singh*, the Federal Court determined that the Immigration and Refugee Board erred by concluding that Canada would recognize a government that tolerated widespread illegal acts as democratic. Justice Simpson accepted the Board's finding that the Pakistani government was democratically elected. However, she found that the evidence showed that the ruling party had tolerated serious state crimes and human rights abuses. Therefore, the Board erred by concluding that the Pakistani government was "democratic" (see the Court's factual findings about the evidence of undemocratic practises in Pakistan: *Singh* at paras 7, 9). In the present case, the IAD did not make comparable findings about why the governments, institutions, and processes in Colombia were undemocratic. Their reasoning appears to be that because DAS was part of the government and engaged in illegal acts under President Uribe, the Colombian structure of government as a whole was undemocratic.

[49] There are two problems with the IAD's application of *Singh*. First, as noted above, the Applicant submitted that other parts of the government – such as the judiciary – were not implicated in the executive's efforts to undermine Colombian democracy. Second, the Applicant noted that several of the groups DAS targeted were actively trying to protect Colombia's "status quo" as a democracy.

[50] The IAD's reasoning is therefore circular. It implies that the mere existence of a government agent attempting subversion would preclude a finding of subversion; it suggests that democracy itself would cease to exist, and that the political system would already be corrupted in its entirety. Justice St-Louis identified a similar logical error in the context of an election process

being subverted in *Aldaw Alsheikh Altayeb v Canada (Public Safety and Emergency Preparedness)*, 2025 FC 139 [*Altayeb*] at paragraph 35:

> 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.
>
> (*Altayeb* at para 35)

[51] It stands to reason that the IAD's acceptance of DAS's large-scale, unlawful acts supports the Applicant's position that the targeted groups were democratic. The Minister had argued that these groups were antagonizing DAS's anti-democratic agenda by defending Colombia's status quo democratic structure.

[52] The recent decisions in *Altayeb*, *Gakumba v Canada (Citizenship and Immigration)*, 2024 FC 1561 [*Gakumba*], *Mejia Ramirez v Canada (Citizenship and Immigration)*, 2024 FC 1939 [*Mejia Ramirez*], and *Egharevba* are illustrative on this point. These cases support the Minister's position that organizations, entities, or processes that act to uphold democratic values are themselves democratic. The Court in each case found it reasonable to view a government's self-imposed repression of democratic rights as evidence that the rights themselves constituted democratic processes. For example, in *Gakumba*, "the public… holding different political views," "political opponents and critics," and the "democratic process of elections" were accepted as democratic institutions or processes within the meaning of paragraph 34(1)(b.1) of

the *IRPA* (*Gakumba* at paras 53-56). Likewise, in the context of DAS, Justice Manson in *Mejia Ramirez* found it reasonable that DAS's targeting of groups critical of the President's administration interfered with democratic processes:

> it was reasonable for the Officer to find that a government agency reporting directly to the President that acts to "neutralize and restrict" voices critical of the President's administration undermines important democratic processes (like electoral processes and public participation and debate) from within government, which is a fundamental institution of the broader democratic process.
>
> (*Mejia Ramirez* at para 35)

[53] While I recognize that *Altayeb*, *Gakumba*, *Mejia Ramirez*, and *Egharevba* all post-date the Decision, and that the IAD did not have the benefit of the Federal Court's findings, they are nonetheless useful in assessing the reasonableness of the IAD's logic. The IAD was obligated to explain their interpretation of the record and articulate why DAS's attempts to undermine the democratic status quo in Colombia was not itself sufficient proof that other Colombian institutions were democratic. More broadly, the IAD erred by failing to justify their position that Colombia, which the IAD implied as having weak institutions and rule of law, could not be said to have a democratic system as "it is understood in Canada" (*Egharevba* at paras 24-26).

[54] My determinative finding is that the IAD did not reasonably apply paragraph 34(1)(b.1) of the *IRPA* to the Minister's list of alleged democratic governments, institutions, and processes. Nor did they justify their sufficiency findings. Given these conclusions, it is unnecessary to decide whether the IAD also erred by not addressing "subversion," nor whether the evidence demonstrated that subversion had taken place.

VIII. Proposed Questions for Certification

[55] Under paragraph 74(d) of the *IRPA*, the Federal Court of Appeal has jurisdiction to hear an appeal of a judicial review judgment under the *IRPA* if the Federal Court "certifies that a serious question of general importance is involved and states the question." A properly certified question must be a serious question 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 [*Lunyamila*] at para 46).

[56] Through written submissions before the hearing, the Applicant proposed the following question for certification:

> Does engaging in an act of "subversion" in s. 34(1)(b.1) of the *IRPA* include acts that undermine or disrupt democratic governments, institutions, or processes, where such acts have a goal of maintaining a specific portion of the government's power?

[57] The same question was recently certified in *Mejia Ramirez*. However, the Applicant asserts that the applicant in *Mejia Ramirez* chose not to pursue an appeal.

[58] The Respondent opposed certification on the basis that the question does not arise from the Decision and is not dispositive of the appeal.

[59] Since the question was already certified in *Mejia Ramirez*, adopting Justice Manson's analysis I agree that the question transcends the interests of the parties and raises an issue of broad significance or general importance (*Mejia Ramirez* at para 41).

[60] However, the proposed question cannot be said to be dispositive of the appeal. The IAD erred in its application of the first step of the *Qu* framework: the democratic status of the proposed victim groups. This error is unreasonable, and the judicial review can be granted on that basis. “An issue that need not be decided cannot ground a properly certified question” (*Lunyamila* at para 46).

[61] Similarly, the question did not “arise from the case itself” (*Lunyamila* at para 46). As the Applicant submits, the IAD declined to address the issue of subversion. The IAD’s discussion of whether “the Colombian government, through DAS, engaged in acts of subversion against its own government by targeting the judiciary” was in respect to whether the Colombian Judiciary could be considered to hold the status of “a democratic government” as “understood in Canada.” This is a separate analysis from what the Applicant proposes for certification.

[62] During reply submissions at the hearing, counsel for the Applicant orally presented two “possibilities” for additional certified questions:

> (1) What is the proper definition of “government” in paragraph 34(1)(b.1) of the *IRPA*?
>
> (2) Does *Qu* create mandatory criteria that the Minister must establish in order for the proposed government, institution, or process to be considered “democratic” as understood in Canada under paragraph 34(1)(b.1)?

[63] Notwithstanding the improper timing of the Applicant’s submissions (see *Medina Rodriguez v Canada (Citizenship and Immigration)*, 2024 FC 401 at para 44), these questions may well be appropriate for certification. As I have found above, the IAD erred in both of these analyses. For instance, there is no jurisprudential support for the position that *Qu* establishes that

each category of organization under paragraph 34(1)(b.1) of the *IRPA* must be proved in the same way or under a defined set of criteria. Nonetheless, neither the Federal Court of Appeal – nor the Federal Court – have directly contemplated this issue. The proper interpretation of paragraph 34(1)(b.1) is somewhat unsettled.

[64] However, again, I cannot say that the Applicant's additional questions for certification are dispositive in this case. The Decision is internally inconsistent, reliant on unexplained criteria, and unintelligible in light of the evidence on record. These conclusions are sufficient to grant the application for judicial review.

[65] Nor were the proposed questions expressly contemplated in the Decision. As Justice Gascon put it in *Tesfaye v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 2040 at paragraph 76, "[t]he question must… arise from the case rather than from the Court's reasons." In this case, the IAD did not expressly turn their mind to the statutory interpretation of "government" or whether *Qu* establishes a mandatory test. Rather, the IAD decided that the evidence and submissions were insufficient to establish that the Colombian Judiciary was an independently democratic branch of government from DAS and the executive. They did not attempt to define "government." For the *Qu* "criteria," the IAD applied requirements they deemed "key aspect[s]" of *Qu*. However, the IAD never unequivocally presented a "test" or how that test would be applied for victim groups tendered as democratic governments or processes. The reasoning and analysis in this Judgment is the Court's, presented to demonstrate the unreasonableness of the Decision and the IAD's vague analysis. The IAD did not demonstrate such reasoning and analysis, and this feature is itself why the Decision is unreasonable.

[66] The Applicant's proposed questions for certification, while important and transcending the interests of the parties, should be left for a case turning solely on those questions of law.

IX. Conclusion

[67] The Decision is unreasonable and the application for judicial review is therefore granted.

[68] I decline to certify a question given that none of the proposed questions are dispositive.

JUDGMENT in IMM-13810-23

THIS COURT'S JUDGMENT is that:

1. The application is granted, and the matter is sent back to be redetermined by a different decision-maker.
2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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