



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/08383/2016

**THE IMMIGRATION ACTS**

Heard at Birmingham  
On 3 May 2018

Decision & Reasons Promulgated  
On 23 May 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

FT  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Sarwar, instructed by Sanctuary Law

For the Respondent: Ms Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, FT, is a citizen of Algeria who was born in 1975. The respondent, in a decision dated 26 July 2016, refused the appellant's protection claim. The appellant appealed to the First-tier Tribunal (Judge Meyler) which, in a decision which was promulgated on 20 January 2017, dismissed the appeal. The appellant then appealed to the Upper Tribunal. Deputy Upper Tribunal Judge Birrell, in a decision promulgated on 7 August 2017, set aside the First-tier Tribunal decision having found an error of law. The appeal was then listed for the decision to be remade at or

following a resumed hearing. The appeal was transferred to me and the resumed hearing took place at Birmingham on 3 May 2018.

2. The appellant had not been represented before the First-tier Tribunal. Judge Birrell found that it had been an error of law on the part of the First-tier Tribunal to refuse an application to adjourn the proceedings to enable the appellant to obtain legal representation. At [19], Judge Birrell wrote:

“The failure of the First-tier Tribunal to address and determine whether the absence of legal representation that might be secured by an adjournment deprived the appellant of a fair hearing constitutes an error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.”

3. At [20], Judge Birrell went on to say:

“However I am satisfied that the appellant would not of course be deprived by the benefit of the positive findings of fact that the judge made in respect of events in Algeria. Therefore when I set aside the decision of the judge insofar as it relates to risk on return I preserve the findings which are very fairly summarised by the judge at paragraph 49 of the decision.”

4. At [49] of his decision, Judge Meyler wrote:

“Insofar as the fresh revelations made at the appeal hearing before me are concerned, relating to his rape and ill-treatment of civilians, I was persuaded, to a reasonable degree of likelihood, that they were established to the lower standard of proof. I have considered Miss Alfred’s submissions [the Presenting Officer] that the appellant had previously failed to mention any of this evidence despite ample opportunity. However I had the benefit of seeing and hearing the appellant give direct oral evidence before me. I found that the appellant was deeply scarred by what he had witnessed and deeply shamed by the rapes. He was not a particularly forthcoming witness and it took a lot of patience on my part for him to gain trust and reveal to me what had actually happened to him.”

5. Contrary to what Judge Birrell has written, Judge Meyler did not summarise all his findings at [49]; there are further findings at [50–55]. These may be summarised as follows: (i) the appellant had worked as a gendarme in the early to mid-1990s and he witnessed multiple rapes, ill-treatment and torture of civilians. He was punished for witnessing these events. The events led to his mental health problems. (ii) The appellant would come to the attention of the authorities on return to Algeria. (iii) The appellant was subjected to serious harm (including repeated rapes) during his work for the gendarmerie. (iv) The appellant would face a prison sentence of up to 10 years for having deserted from the armed forces in Algeria. In general, this punishment would not be breach Article 3 ECHR
6. Judge Meyler, although he accepted the appellant’s account of past events in Algeria, found that the appellant would not be at risk on return. This was because the appellant had failed to provide any evidence that “prisoners with mental health problems are not treated appropriately in detention”. The judge acknowledged that there existed very little, if any, evidence regarding prison conditions in Algeria. The judge noted that the appellant claimed to have escaped from a mental health hospital

before he came to the United Kingdom. The existence of such a hospital appeared to indicate that mental health treatment was available in Algeria.

7. For the avoidance of any doubt, I find that the appellant is entitled to the preserved findings of the First-tier Tribunal as I have summarised above in addition to those preserved at [49]. It is on the basis of those findings that I have assessed risk on return.
8. Before the Upper Tribunal, the appellant had legal representation. However, the appellant did not give oral evidence. I have a medical report from a Dr Vinod Kumar a consultant psychiatrist, which is dated 29 April 2018. In common with the First-tier Tribunal, Dr Kumar had experienced considerable difficulty in extracting any history from the appellant during interview. Dr Kumar acknowledged [36] that it was difficult to give a diagnosis in such circumstances. However, he wrote, “my best provisional diagnosis would be that he is suffering from some sort of paranoid disorder. He appeared to be very suspicious and guarded. I did not feel that all his symptoms, presented in various documents to me could be explained by either simple severe depression or chronic PTSD. ... Overall, in the long term the prognosis of his mental health appears to be poor as he has suffered from it for a number of years”. The doctor also observed that “considering that he has no job and he fears being tortured in Algeria he is likely to be more vulnerable in Algeria than in this country”. Dr Kumar concluded at [40], “I feel that on the balance of probabilities, [the appellant] is unlikely to seek treatment for his mental health difficulties either in the UK or Algeria or comply with the treatment provided as being the case in the UK”. The doctor acknowledged the appellant’s failure or refusal to take medication orally and considered that anti-psychotic medication may be delivered to the appellant by “depot medication” (i.e. by injection). Such a treatment would require the appellant first to be sectioned under the Mental Health Act (MHA).
9. The appellant’s solicitors have provided some evidence of prison conditions in Algeria but, as Ms Aboni pointed out, much of it is dated. An internet extract ([countrystudies.us/algeria](http://countrystudies.us/algeria)) appears to date from the early 1990s. It records that “poor food and inadequate bedding and overcrowding” exists in Algerian prisons. In addition, there is a Human Rights Watch (HRW) report of 2015 which concludes that “2014 saw no overall improvement in human rights conditions in Algeria despite promises that the government has made since 2011 to introduce reform”.
10. I have no doubt that those now representing the appellant have done what they can to obtain evidence of current prison conditions in Algeria. It appears that there is very little evidence available and there is no relevant country guidance from the Upper Tribunal. I acknowledge that the burden of proof rests on the appellant himself but only to the lower standard. I refer to the preserved findings of fact of the First-tier Tribunal. What we do know is that this appellant, when he has fallen into the hands of the Algerian authorities in the past, has been grossly abused to the extent that the abuse has permanently affected his mental health. We know also that the appellant is likely to be detained on arrival by the authorities and subsequently imprisoned for 10 years or maybe longer. The question is whether this appellant, having his particular history and bearing the characteristics which he has been found

to possess (in particular, his severe mental health problems) is likely to suffer persecution or ill-treatment in Algeria. I acknowledge that past persecution is an indicator of the likelihood of future persecution occurring. Judge Meyler found that there was no evidence to show that prisoners with mental health problems were not treated appropriately; there is, of course, the appellant's own evidence that he was not 'treated appropriately' when previously in detention. I acknowledge that that detention may have occurred either in the mid-2000s or the 1990s (the appellant's evidence before the First-tier Tribunal was not clear on that point) but I reject Ms Aboni's submission the fact that the appellant claims to have been "injected" while in detention is suggestive of the depot medication which Dr Kumar now suggests. It is likely that the injections were part of the torture of the appellant rather than sympathetic medical treatment. Further, it is clear that the appellant's current mental condition is very severely worse than it was at the time of his previous detention. He is much more vulnerable than he has been in the past. Whilst the appellant has not conclusively established that it is likely that he will be abused as a vulnerable person in an Algerian prison, his past ill-treatment, the evidence which has been adduced regarding the general human rights situation in Algeria and the lack of accountability of the authorities there lead me to conclude that the appellant has established that there is a real risk that he would suffer ill-treatment on return, either during interrogation at the point of return or subsequently whilst in prison or detention.

11. I reject Ms Aboni's submission that I should place little weight on Dr Kumar's report because the doctor has failed to provide a definitive diagnosis of the appellant's condition. The doctor did what he could in difficult circumstances whilst it is clear that he considers that the appellant is suffering from a severe mental health problem and that, even if treatment were available, he is unlikely to seek access to it in Algeria. If the appellant is, as seems likely, to be imprisoned on his return I find that the chances of his either seeking or obtaining adequate mental health treatment are virtually zero. I find that the appellant's subjective fear of ill-treatment on return to Algeria is palpable and that, given his particular characteristics, it is a fear which is also objectively well-founded.

### **Notice of Decision**

12. The appellant's appeal against the decision of the Secretary of State dated 26 July 2016 is allowed on asylum and human rights (Article 3 ECHR) grounds.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 18 MAY 2018

Upper Tribunal Judge Lane

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 18 MAY 2018

Upper Tribunal Judge Lane