

H-MGM-V3

Heard at Field House

MB (Homosexual – Military
Service) Latvia CG [2003]
UKIAT 00209

On 3 June 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.4TH August 2003

Before:

**Mr C P Mather - Chairman
Mr M L James**

Between

Mr Martins BUVMANIS

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the Appellant: Ms E Storey of the Refugee Legal Centre
For the Respondent: Mr J Gulvin, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, Martins Buvmanis is a citizen of Latvia. He arrived in the United Kingdom on 7 July 1998.
2. The Appellant appeals, with permission, the determination of an Adjudicator (Mrs S M Charlton Brown) in which she dismissed his appeal on both asylum and human rights grounds. That appeal was against the decision, made on 16 February 2001 by the

Respondent, to refuse to vary his leave to remain in the United Kingdom following the refusal of his asylum claim.

3. The Appellant is gay. He came to the United Kingdom because he feared what might happen to him, as a gay, when he was conscripted into the Latvian army for his military service. He made it clear in his application and in the subsequent witness statement that although he had been subject to discrimination as a gay, it was not simply for that reason that he claimed asylum. He gives a history of being verbally abused and tells how he was forced to leave a job as a shop assistant because of abuse from customers. He said that he was beaten by police on one occasion.
4. The Appellant said that he received call-up papers and went for one interview as part of the process of conscription. He did not turn up for the second interview and left the country. Further call-up papers had been received since and he had one visit from the police asking why he had not done his military service.
5. The Adjudicator did not find the Appellant to be credible for a number of reasons which she set out in some detail in her determination. She was dismissive of evidence provided by the "Lesbian and Gay Association in Latvia" which she said did not appear to be objective. She dismissed the appeal because, finding the Appellant's account lacked credibility, and that it was not supported by the objective evidence, there was no basis for a claim that he would be persecuted, or subjected to mistreatment amounting to a breach of his Article 3 (ECHR) rights, either on the grounds that he feared military service or due to his homosexuality.
6. Before us, Ms Storey emphasised that the appellant was not claiming that he would be persecuted, or put at the risk of treatment subject to Article 3 because of his homosexuality and the general discrimination and abuse that he had experienced in Latvia. His claim is that, because he is a homosexual, he will be subjected to violence and mistreatment by fellow conscripts during his military service or, if he refuses to do his military service he will experience similar problems when serving a sentence of imprisonment. She said, although we have not seen any evidence, that the penalty for refusing to undertake military service is twelve months imprisonment.
7. The first Ground of Appeal refers to the Adjudicator's finding that the International Lesbian and Gay Association evidence is not objective. Ms Storey submitted that the Adjudicator had preferred the Respondent's objective evidence in the CIPU Bulletin. But, she said, much of the section headed "homosexuals" at section 6 of the CIPU Latvia Bulletin 01/02 is sourced to the very same association and its report. The Adjudicator had given no basis for saying that she found the report was not objective. Ms Storey

suggested that she was wrong to dismiss it without considering it. We agree that she was wrong to dismiss it altogether and certainly to do so without giving any satisfactory reasons. In considering this appeal we propose to consider it.

8. The rest of the grounds relate to the Adjudicator's credibility findings. We do not need to examine those grounds in detail because we do not accept, even on his own account, that this Appellant has made out his assertion that he is at real risk of persecution or of conduct which would breach Article 3 of the European Convention on Human Rights if he were to be returned to Latvia.
9. Both representatives agreed that homosexuals were, dependent on the conditions in a particular country, capable of forming a particular social group. We, for the purposes of the determination, accept that proposition, in relation to Latvia.
10. Ms Storey said the Appellant has been subject to discrimination in the past. It is not in dispute that he is a homosexual. It is not in dispute that he is of an age making him liable to be called-up for military service, as he says he has been. According to the CIPU Bulletin male Latvians are liable to twelve months of military service between the ages of 19 and 27. This Appellant is now aged 24. She made some very generalised and unsupported submissions that as homosexuals suffered discrimination generally in Latvian society it would be very much worse for them either in the army or in a prison. Presumably to illustrate the fact that there was intolerance within the army, she reminded us that it was only recently that the UK had been forced to recruit gay men; and that the US army operate what she described as a 'don't ask, don't tell policy'. We did not find those two examples were relevant to a case concerning the Latvian army. In further support of her assertion she referred to the International Lesbian and Gay Association World Legal Survey, which had been rejected by the Adjudicator. She wished us to, and we have, read the whole of the document. In particular, she relied on one item concerning a Latvian police officer who was dismissed in 1997 after admitting being a homosexual in a newspaper interview. He and his lover were seriously assaulted, because of their homosexuality, in April 1998. It was believed, by the homosexual community, that attack may have been related to their complaint to the National Human Rights Office and to the police officer's many appearances on television. Those who assaulted them were arrested but released. Also, it is said the victim was advised by police officers that if he were considering making a report, with a view to initiating a criminal case, it would better, and in his interest, not to do so. Ms Storey said that illustrated there was no sufficient protection for gay men if they were assaulted. She said that if somebody with such a high profile could not get protection then this Appellant did

not have a hope. We think the matter may also be looked at the other way. It could be that it was because of his profile that the ex-police officer got little sympathy. However it is not possible to draw a conclusion either way.

11. For the Respondent Mr Gulvin took us to the CIPU Bulletin. It is clear homosexual acts have now been decriminalised and laws have been passed which, at least in theory, will provide protection from discrimination on the grounds of sexual orientation. There is now a National Human Rights Office. That office found that the police officer referred to by Ms Storey was dismissed in violation of his rights. Mr Gulvin submitted the democratisation process in Latvia has allowed the establishment of gay and lesbian organisations, bars and clubs. That is all apparent from the Appellant's objective material, including the report to which we have already referred. We do not doubt that there is still discrimination by the general population but that is not the basis of this Appellant's claim.
12. Section 4 of the CIPU Bulletin deals with military service. Postponement of military service is possible for full-time students, sole breadwinners or individuals who wish to postpone their service for any valid reason. This is contrary to the assertion by the appellant in interview that military service takes precedence over all else. Exemption is granted for health reasons or specific domestic reasons. The Bulletin says that many postponements and exemptions are granted. As many as 87% of all liable conscripts were entitled to postponement or exemption in 1995.
13. The bulletin goes on to say that draft evasion and desertion are punishable under the criminal code. It also says that draft evasion is widespread. It is rarely actually punished, because there are enough voluntary applicants to achieve the required number of recruits. In 1995, although 2000 people were charged as draft evaders only two came to be sentenced. The Adjudicator is criticised in the Grounds of Appeal for reliance on that particular section of the CIPU Report. She had commented that those statistics 'spoke for themselves'. The assertion in the Grounds of Appeal is that there was nothing in the evidence to say that the 2000 who were charged were not detained before trial and that it would be unusual if persons charged with such offences were not detained. There is no basis whatsoever for that assertion. There is no evidence that these people either were, or were not, detained.
14. The Bulletin goes on to say that it was expected that a law allowing for alternative service for conscientious objectors would take effect in July 2002. It is intended to apply to individuals who refuse to bear arms for either religious or moral reasons. It was expected that the alternative service would last for two years and be served in state or municipal institutions.

15. Finally, in the Bulletin, there is reference to "Hazing". Ms Storey submitted that the practice of Hazing (beating up new recruits) is something which would be very much worse for the Appellant, as a gay man, than it would be if he were not gay. The section in the Bulletin makes it clear that action is being taken to eliminate Hazing following the death of a conscript in April 2001. The new programme to eliminate Hazing was introduced in May 2001 and, on 11 May 2001 twelve soldiers were charged with Hazing 28 recruits.
16. No evidence has been provided by the Appellant that a gay man, either in the military, or in prison, would receive worse treatment than a man who is not gay. We have been asked to simply accept that as true. We are not prepared to do that. Evidence is required and there is none. Had there been a serious problem we would have expected evidence to be forthcoming, in particular from the International Lesbian and Gay Association. In any event, it is unlikely that the Appellant would have to do his military service. As Mr Gulvin said there is the possibility of claiming an exemption. It cannot be said that the Appellant could not perform the alternative service. We have not seen the rules for that service and it has not been shown that it is not open to the Appellant. It is clear that large numbers of people successfully evade military service. Of those who are caught evading military service the statistics show they are rarely sentenced for it. We have no evidence as to what the normal sentence for evasion of military service is.
17. We were referred to the poor prison conditions set out in the US State Department Report. There is nothing there to suggest that serving a sentence of imprisonment would engage Article 3 of the European Convention on Human Rights or amount to persecution. The National Human Rights Organisation deals with complaints and it is clear that there is a mechanism in place to protect prisoners' rights.
18. In our view there is no sufficient evidence, even on the Appellant's own account, that he is at real risk of persecution, or ill-treatment amounting to a breach of Article 3 when he is returned to Latvia. We have found that there is little likelihood that he will be required to do his national service, or if he were, but refused, that he would be sentenced to a term of imprisonment. Even if we are wrong about that there is no evidence before us that the treatment the Appellant, as a gay man, would receive, either in the army or in prison, would amount persecution or a breach of his rights under Article 3. We cannot assume, with no evidence, that to be the case.
19. Ms Storey submitted that, even if the treatment this Appellant would receive in the army or in prison did not amount to a breach

of his rights under Article 3, it would amount to a breach at the higher end of possible breaches of physical and moral integrity under the provisions of Article 8. We reminded her of the decision in Ullah [2002] EWCA Civ 1856. She sought to argue that authority conflicted with Bensaid ECHR 6.2.01 which was higher authority. We do not need to consider this submission because we have found that there is no reasonable likelihood of this Appellant either having to perform military service or being sentenced to a term of imprisonment. Further, there is no evidence that he will be treated any differently from any other individual. There is therefore no question of Article 8 being engaged.

20. We do not regard the example of the dismissed gay policeman, who had no recourse when he sought protection, as evidence the Appellant would not, even if there were an objective basis for his fear, be unable to obtain protection from the authorities. The gay policeman is an example of something that has gone wrong. That is all it is, one individual's experience. The objective evidence of the improvement of conditions for homosexuals in Latvia; of the existence of the National Human Rights Organisation; and the legalisation of homosexual relations all point to a much improving situation.
21. The appeal is dismissed.

C P Mather
Vice President