IN THE IMMIGRATION APPEAL TRIBUNAL

Decision no AK (Article 3-Military Service-Chechen War) Russia CG [2002] UKIAT 01325
Appeal no. HX 42619-01

Heard: 22.04.2002
Typed: 23.04.2002
Sent out:

IMMIGRATION AND ASYLUM ACTS 1971-99

Before:

John Freeman (chairman)
and
Mr R Hamilton

Between:

Andrey KROTOV,
appellant

and:

Secretary of State for the Home Department,
respondent

DECISION ON APPEAL

Mr R Solomon (counsel instructed by Bart Williams & Co) for the appellant
Mr T Wilkie for the respondent

This is an appeal from a decision of an adjudicator (Mr DJ Boyd QC), sitting at Staines on 29 November, dismissing an asylum and human rights appeal by a citizen of the Russian Federation, from removal directions as an illegal entrant on 1 June 2001. Leave was given on the basis that it was "arguable that the Adjudicator's findings on the applicant's objections to performing military service are flawed".

2. The adjudicator took the view that

a) the appellant, as a partial conscientious objector, did not qualify on the basis of his principles alone, as the war in Chechnya, to which he objected, had not been "internationally condemned";
b) the conditions of service he faced would not infringe his human rights; and
c) the seven years' maximum term of imprisonment he faced was not disproportionate.

These represent the general grounds of objection to military service left open under the Refugee Convention by the Court of Appeal in **Sepet & Bulbul [2001] EWCA Civ 681** § 61 (Laws LJ). The issues before us on that are as follows:

a) Does a particular war need to have been "internationally condemned" before an asylum-seeker can succeed in a claim under the Refugee Convention on the basis of a partial objection to it? If yes, has the conflict in Chechnya been "internationally condemned"? If no, does it meet whatever is the appropriate test?
b) Would the conditions of service faced by this appellant be "themselves so harsh as to amount to persecution on the facts"? (see Laws LJ, above)
c) Is seven years' imprisonment disproportionate in itself? If not, would the actual conditions of imprisonment be so?

It will not be necessary for us to consider the effect of the Human Rights Convention, as it is agreed that conditions which met the tests at b) or c) above would also amount to "inhuman or degrading treatment" under article 3 (and *vice versa*), unless we should reject one or more of the above heads of the appellant's case for not showing a Refugee Convention reason.

3. On a), Mr Solomon relied on the decision of the Tribunal (Storey and Fox VPP) in **Foughali [00/TH/01513]**. Agreeing with some, but not other previous decisions, they said (§ 33):

... whilst this category may include participation in a war which is internationally condemned, its defining characteristic and hallmark is service in a military which breaches international standards ...

The Court of Appeal (see above) in **Sepet** had stated the category as military service involving acts contrary to basic rules of human conduct; but Mr Solomon was unable to refer us to anything in their decision which settled any argument as to whether the nature of the conflict had to be "internationally condemned". The UNHCR Handbook refers to it (§ 171) as

... military action ... condemned by the international community as contrary to basic rules of human conduct ...

Those words of the Handbook have stood for a very long time: although they do not have the force of law, they represent the nearest approach so far to an international code of refugee law, and there are sound reasons of international comity why the legitimacy of a particular campaign should not be passed on by either an individual asylum-seeker or an individual court, but left to the judgment of the international community. We regret we are unable to agree with the approach in **Foughali**.

4. There is nothing to show that the current conflict in Chechnya has been condemned by any official international body, either as to aims or methods. Probably the most authoritative body in this context is the UN Commission on Human Rights: while the Human Rights Watch report for 2002 before us shows (bundle pp 87-88) that the UNCHR has for two years running expressed (no doubt

rightly) “grave concern about human rights violations in Chechnya”, “Notably it fell short of calling for an international commission of inquiry”. That is well short of the international condemnation which in our view is required for the appellant to succeed on this point.

5. Turning to b), there is a reference in the UNHCR background paper of November 2000 at the end of § 5.5 to the “violent hazing [*American for “bullying”: it echoes a passage in the State Department report*] of new recruits”; in the Amnesty International report for 2001 (bundle pp 97-98) there is a reference to “widespread torture and ill-treatment in the armed forces”, said to have resulted in the deaths of a number of soldiers and officers; but the examples given all come from one particular unit (72nd regiment, 42nd army division). The CIPU report (§ 6.6) is in general terms, and mainly relies on the sources we have already quoted. No doubt there is serious bullying in the Russian forces in Chechnya (as regrettably occurs even in much better-regulated armies); however not only is there no indication of any Refugee Convention reason behind any selection of the victims, but there is nothing to show that service in those forces for any individual is likely to carry any real risk of ill-treatment either amounting to persecution or “inhuman or degrading treatment” contrary to article 3. As Mr Wilkie pointed out, the ill-treatment this appellant claimed to have suffered (decision § 13) amounted to two incidents only: once he was kicked for refusing to hand over money, and once beaten for insolence to a superior officer. Regrettable as those incidents were, we do not consider that either this appellant’s history or general conditions suggest that he faced any real risk of conditions of service amounting to persecution (or art. 3 ill-treatment) in themselves.

6. On c), we agree with the view expressed by the Tribunal in **Foughali** that a substantial period of imprisonment (in that case 2-10 years, in this 3-7) cannot be regarded as disproportionate in itself for refusing active military service. It may well be argued that the more dangerous that may be, the more serious a deterrent is required. On the conditions of imprisonment, bad as they are, we see nothing to indicate that they are in any way discriminatorily applied to conscientious objectors. It follows that the appellant cannot succeed on this point under the Refugee Convention, for lack of a Convention reason. So we have to go on to consider whether the conditions of any imprisonment he might face would amount to “inhuman or degrading treatment”.

7. Mr Wilkie’s first point was that in practice he was not likely to face imprisonment at all, given that there are said (CIPU report 6.4) to be 1,500 deserters lurking in Moscow, and 12,000 nationwide. However, even supposing those figures are at all accurate (and by their nature they must be mainly guesswork), there is evidence, not abundant but some, of prosecutions taking place. Whatever the opportunities for sidling into Moscow overland and then lurking on the fringes of society, they would not exist for someone facing return there by air through official channels. Certainly the appellant might avoid those by making a voluntary departure, possibly overland; but he would still most likely have to pass frontier control at some point, unlike deserters returning directly from Chechnya. In our view there is a real risk of the appellant’s facing whatever punishment is in practice applied to deserters.

8. We should make it clear that all the evidence put before us on the conditions of imprisonment applied to prisoners, including ordinary criminal prisoners, in general. Mr Solomon's first point was that the rarity of bail, and the delays in the process, result in "many suspects remaining in pre-trial detention for longer than the maximum penalty they might face if convicted". Deplorable as this is, he could not however refer us to any evidence that such persons would not receive credit for the time they had spent awaiting trial, which we should expect to see if that were the position. We do not see any real risk of a conscientious objector facing a total sentence of more than seven years.

9. As for the conditions themselves, the UNHCR background paper (§ 4.3) quotes the State Department report for 1999: the particular points noted are not replicated in that for 2000 (appellant's solicitors' bundle p 13), though that still concludes that "Prison conditions are extremely harsh and frequently life threatening". As usual, a detailed critique is given, and we have no doubt that conditions for the average prisoner in Russia are deeply unpleasant. There is however no indication of deliberate torture or ill-treatment being prevalent, and the defects in the system appear to be the result of institutional incompetence and lack of resources. There is no doubt a point at which even unintended bad conditions reach the level of "inhuman or degrading treatment": clearly the standard is a general one, and if they are to be so regarded for a conscientious objector, then the same judgment must apply in the case, for example, of a convicted murderer. If such a person were to escape to this country, then in those circumstances he would be entitled to resist removal on that basis (cf. **Chahal v. United Kingdom [1996] 23 EHRR 413 ECtHR**). No doubt the appellate authorities would not shrink from the consequences of that decision; but it is some indication of the serious nature of the considerations involved. In our view, the conditions of imprisonment in the Russian Federation generally do not raise any real risk of to torture or other degrading or inhuman treatment, contrary to art. 3 of the European Convention on Human Rights. It follows that the appeal is dismissed.

Appeal dismissed

John Freeman (chairman)