

IMMIGRATION APPEAL TRIBUNAL

Appeal No: FA (Military Service-Prison Conditions) Turkey CG [2002] UKIAT 0111
HX-41912-01

Date heard: 12/03/2002
Date notified: 12/04/2002

Before:
Mr Justice Collins (President)
Mr T S Culver
Mr A A Lloyd JP

Faith Akcan
Appellant

The Secretary of State for the Home Department
Respondents

Determination and Reasons

1. The appellant is an ethnic Kurd from Turkey. He claimed to have entered this country on 23 May 2000 and made his asylum application on 5 June. The Secretary of State refused the application and he appealed to an adjudicator, Mr Digney. That appeal was dismissed on 13 December last year. He appeals to us by leave of the Tribunal on essentially two matters, the issue as to whether he would be ill-treated and, if so, whether that would amount either to persecution or to a breach of his human rights as a failed asylum seeker, in particular as a draft evader. The two grounds thus really run into each other.
2. Miss Baruah, who has represented the appellant before us, has recognised that the appellant's claim must largely be based upon the conditions that it is said he would suffer as a draft evader if he were sentenced, as she submits, would be likely to be the case, to serve a sentence at a house of correction, and accordingly her submission really relies upon an alleged breach of Article 3 of the European Convention on Human Rights.
3. She is constrained to approach the matter in that way because the adjudicator did not believe the account that the appellant had given as to why he had decided to leave Turkey. It was his case that he had been a member of HADEP and had as a result been detained and tortured by the authorities. He had also, following his move from Bingol, his home area, to Istanbul, been regularly, as he put it, harassed, and ill-treated by the police, because when they checked him and he produced his identity card it showed where he was from. He described serious assaults but he had no injuries which were likely to be commensurate with such assaults, and overall the adjudicator, for good reason, did not believe his account.
4. We need not go into the details of that because Miss Baruah has not sought to go behind those findings, recognising that it would be quite impossible for her to persuade the Tribunal that the adjudicator was not entitled to reach the decisions on

fact that he did. As is well known, this Tribunal will only interfere with findings of fact by an adjudicator if persuaded that they are clearly wrong.

5. What led the appellant to leave Istanbul was receipt of call-up papers to do his military service. He claims that he did not want to undergo military service because he had, as he put it, a conscientious objection to serving as a result of his Kurdish ethnic origin and his political beliefs, and he would refuse to fight against his own people, even if not sent into a conflict zone he would refuse to serve even in a supporting role.'

6. It is not entirely clear whether he was indicating anything more than an objection to serving and being compelled to fight against fellow Kurds. Certainly it does not sound as if he was putting forward a full conscientious objection to military service because he was, for example, a pacifist, rather than an objection based on his desire not to fight against fellow Kurds. Indeed, he did not suggest before the adjudicator that he was a full conscientious objector. Miss Baruah recognises the correctness of the adjudicator's conclusion that, in the light of the decision of the Court of Appeal in *Sepeh and Bulbul* [2001] IAR 452, any claim to asylum based upon an objection to military service, whether partial or absolute, was doomed to failure. That indeed is the position.

7. What Miss Baruah relies on is the question of draft evasion. She draws our attention to the possible penalties for draft evasion which are set out in Article 63.1(a) of the Turkish Military Penal Code. That imposes a sliding scale for draft evasion ranging from a possible sentence of one month's imprisonment for those who report within seven days to between six months to three years in a house of correction for those arrested after a period of three months, and it is said that instead of normal prison, those sentenced for lengthier failure to comply with the draft will serve their sentences in a house of correction.

8. The adjudicator dealt with that by saying that the submission that service in a house of correction would be inhuman, degrading and thus a breach of Article 3, was something with which he could not agree. It is complained that that is unreasoned and wrong.

9. The problem, as Miss Baruah recognises, that she faces, is that she has no evidence that the conditions in a house of correction are likely to be such as could properly be regarded as contrary to Article 3. We do not doubt that the conditions would not be pleasant. Equally, we are prepared to believe that they may be more rigorous than those which may be applicable in a prison, but it is a far step from that to say that there is a real risk that such incarceration would breach Article 3. One has to bear in mind, although of course Article 3 is absolute, that one looks to the general conditions in a particular country, and to the general expectation of the population of a particular country. What may seem degrading to someone in this country may not be so to someone who is used to a different way of life and to different circumstances. There is of course a limit beyond which one cannot go, but we cannot and should not impose our standards universally. We have to bear-in mind, too, that Turkey is a signatory to the European Convention on Human Rights.

10. We asked Miss Baruah whether she was aware of any reported case where a Turkish citizen had complained to Strasbourg about the conditions, either in a prison or in a house of correction, and suggested that they contravened Article 3. She was unable to point to any such authority and we do bear in mind that the solicitors who instruct her, Howe & Co., are accustomed to dealing with many Turkish Kurds and if there were any such case we have no doubt that it would have been discovered. Apart from that there is no evidence, whether anecdotal or otherwise, as to the conditions within a house of correction, and absent such evidence, it is quite impossible for us to assume that the conditions would be such as would breach Article 3. Accordingly that ground in our judgment is not made out.

11. Miss Baruah also relies upon the concern that on return the appellant may well be interrogated, and because the Turkish police are accustomed to torture, may well suffer torture. The problem with that is that, quite apart from his draft evasion, there is no reason why he should be interrogated. If he were to be, so would any other returning Turkish Kurd and although there is some evidence as to what has happened to some who have returned, the fact is that the only statistics available show, that out of some thousands who are returned, some seventy at most have complained about particular ill-treatment.

12. There are of course accounts. given by individuals as to ill-treatment that they have suffered. We have no doubt that some have indeed been very badly treated and may well have been tortured by the authorities, but it is not possible to assume that because it has happened to a particular individual there is a real risk that it will happen to another whose circumstances may be totally different. This appellant has no particular reason to stir up concern in the authorities so as to attract interrogation. Once his account is rejected and his credibility is not accepted, he is not someone in whom the authorities are likely to have any particular interest. In those circumstances we do not accept that there is a real risk that he will be the subject of treatment which contravenes either of the Conventions were he to return as a failed asylum seeker.

13. Accordingly, in our view, the decision of the adjudicator was correct and to his appeal must be dismissed.

MR JUSTICE COLLINS
PRESIDENT

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