

IMMIGRATION APPEAL TRIBUNAL

Heard at : Field House
on : 2nd October 2002
Dictated : 4th October 2002

Determination Promulgated
6 December 2002
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Before:

**Mr A R Mackey – Vice President
Mr A G Jeevanjee
Mr A Smith**

between

Mehmet SEVER

Appellant

and

The Secretary of State for the Home Department

Respondent

DETERMINATION AND REASONS

Representation

For the Appellant: Mr T Siddle of Counsel representing Trayman & Co,
Solicitors
For the Respondent: Mr I Graham, Home Office Presenting Officer

1. The Appellant, a citizen of Turkey, appeals with leave, against the determination of an Adjudicator Mr H W Turcan, promulgated 16th April 2002, wherein he dismissed an appeal against the decision of the Respondent who had issued directions for removal from the United Kingdom following refusal of an asylum claim. A human rights claim was also dismissed.
2. This matter came before the Tribunal on an earlier date when it was noted that the file of the Appellate Authority was largely missing. It was agreed by both parties that a file would be “cobbled together” from the copies of relevant documentation held by

both parties so that the appeal could proceed. We were assured by Mr Siddle at the hearing that this had taken place and proceeded on that basis.

3. The grounds upon which leave had been granted had been somewhat restricted by the Acting Vice President but however in the light of the situation that parts of the file were not available to the Acting Vice President we determined at the outset that all grounds of appeal could be argued.

The Adjudicator's determination.

4. The claim made by the Appellant was that he would be at risk of persecution or treatment contrary to provisions of the ECHR if he were returned to Turkey. He based this on two grounds. The first based on his support for the DHKP/C and Alevi religion and more significantly risks based on his homosexuality.
5. The Appellant claimed that he had failed to mention that he was gay in his initial interview as he had been accompanied by his brother-in-law when he completed the SEF and his brother-in-law would have disapproved very strongly of his sexual orientation. The Appellant claimed he had been gay for some two years but his family did not know of this although they may have been suspicious. He claimed that he had been raped by two police officers in a woodland in 1999 or 2000 after they had discovered he was gay. He was not under arrest at the time but the officers threatened that they would tell his family if he complained about their behaviour. He then claimed that some officers had subsequently taken him to the police station in 1999 in order to scare him but they did not repeat the behaviour. The Appellant had also confirmed he had received call up papers for his military service. This had been deferred because he was preparing to go to university. However he stated that in fact he would not have to perform military service if he satisfied the authorities he was gay but this would mean that he would need to be issued with a "pink card" and his family would then learn about his homosexuality.
6. Before the Adjudicator it was noted that evidence and submissions by Mr Siddle were put forward and that the objective evidence relating to the attitude of the Turkish authorities to gays was very limited. The CIPU Report set out two sentences which stated:

"There are no laws specifically concerning homosexual acts. In the penal code there are articles which are intended to safeguard public morals, and which can be used against homosexuals".

Mr Siddle also submitted evidence of the banning of a party of gay tourists in Turkey.

7. The Adjudicator went on to conclude that he had no difficulty in accepting the Appellant was gay and understood his initial reluctance to share this information with his brother-in-law. He also accepted that the gay community in Turkey were seen as objects of suspicion and contempt and "may be subjected to an element of discrimination when they are seeking employment". In relation to the incident of the gay tourists on the cruise he noted that the report stated that the local mayor suggested the police had acted on their own initiative and that the interior ministry denied the police were acting on instructions. The local mayor had later apologised

for the police action to a spokesman for the US Embassy and that he had brought the case to the attention of the Turkish authorities and was pleased with their response.

8. On the issue of whether the Appellant had been raped by the two police officers the Adjudicator concluded:

“Whilst I recognise that the Appellant claims to have been warned against making a complaint the fact remains that he did not register a complaint nor does he claim to have received any physical injuries as a result of the attack. I recognise that in a country where homosexuals are viewed with contempt it is possible that he was indeed subjected to a homosexual rape but I am unable to find, even to the lower **Sivakumaran** standard that such an attack did in fact take place”.

9. The Adjudicator then went on to state that he was satisfied that “even if the rape did take place the police officers responsible were not attacking in furtherance of any official policy to intimidate or humiliate practicing homosexuals and that their actions would not have been condoned by their superiors. They could not therefore be described as agents of persecution for whom the Turkish state should be held responsible.” The Adjudicator then concluded that the Appellant did not have a well-founded fear of persecution for a Refugee Convention reason. He went on to consider whether the Appellant would suffer cruel or inhumane treatment contrary to Article 3 of the ECHR. In this regard the Adjudicator considered the Appellant’s objection to military service and noted that although the Appellant may suffer some harassment before his homosexuality is officially recognised. He was satisfied that the Appellant would be issued with a “pink card” and thus not required to serve. On the issue of the rapes by the police which the Appellant claimed had taken place, the Adjudicator accepted that the Appellant may well have been arrested by the police and they may have employed intimidatory tactics however while recognising that past ill-treatment may sometimes be evidence of a future risk he did not consider that the Appellant was at such a risk.
10. At paragraph 25 of the determination the Adjudicator considered the ECHR, Articles 2, 3, 8, 9, 10, 11, 12, 14 and Article 2 of the first Protocol and noted that while he accepted that gays were not popular in Turkey: “I am not satisfied that the difficulties which the Appellant would face are such as would amount to a breach of his human rights.”
11. He therefore dismissed the appeal.

The Appellant’s Submissions

12. At the outset Mr Siddle asked us to note that the Adjudicator had accepted the Appellant was a homosexual. He submitted that there was sufficient evidence before the Adjudicator to reach a conclusion that the rapes by the policemen had taken place and that the conclusions of the Adjudicator that he was unable to find, to the **Sivakumaran** standard, that such an attack took place was flawed. He directed us to the Appellant’s reply to question 47 in the initial interview where the Appellant stated that he had been subject to more than one sexual assault, with a period of time in between them and that he had suffered injuries in those attacks but they had healed. He submitted therefore that all that was left from the findings of the Adjudicator was

that there had been a lack of formal complaint. This was a weak point, in his submission, given that it would be unlikely a person such as the Appellant would complain to the police when it was police behaviour that was at issue.

13. In relation to the possible “alternative conclusion” of the Adjudicator Mr Siddle submitted that the conclusions of the Adjudicator did not go far enough and that his findings at paragraph 16 undermine the whole determination to the extent that the appeal should be remitted for hearing afresh.
14. In addition he submitted that the Adjudicator had failed to give sufficient reasoning for his conclusions under the human rights claims and in particular the Appellant’s right to a private life, under Article 8 had not been adequately considered in the determination. Beyond this the Adjudicator had not given sufficient consideration to Article 14 and the discriminatory behaviour against the Appellant in respect of his search for work. He submitted that in this regard the Adjudicator had failed to make a finding as to whether there was a real risk of a breach of Article 14 and the required consideration of the proportionality of that breach.
15. Finally he submitted that the attacks by the police officers raised the issue of sufficiency of protection for the Appellant and he submitted this was not available from the Turkish authorities.

The Respondent’s Submissions

16. Mr Graham submitted that the findings of the Adjudicator at paragraph 16 did not indicate inconsistencies and that paragraph 16 merely recorded the Adjudicator’s reasoning process and not an improper or flawed determination. The Adjudicator had taken into account the objective situation and recognised that rape could take place in the situations the Appellant had described however, based on the evidence before him the Adjudicator was entitled to reach a conclusion that he was not satisfied, to the lower standard, that the attack had in fact taken place.
17. In addition to this there was no finding in relation to Article 8. He submitted that as there was no finding of past persecution in Turkey or risk of future persecution, that the consideration of the ECHR issues was not necessary.
18. He submitted further that the acts of the police officers even if accepted should be seen as those of rogue officers. In that situation the Appellant could have complained and there was no evidence put forward as to the other avenues of redress that the Appellant could have availed himself of.
19. He therefore submitted that the reasoning of the Adjudicator was sustainable and that the appeal should be dismissed.
20. In reply Mr Siddle submitted that the evidence of past persecution or degrading behaviour should be noted by us and in particular the determination in **Demirkaya**. He stated that he was unable to direct us to any further objective information on the situation relating to the treatment of homosexuals in Turkey but referred us to the CIPU Report and the incident relating to the gay tourist cruise.

21. In summary he submitted that the risks to this Appellant were of torture or degrading treatment while in detention. The risk of being detained, he submitted would arise when the Appellant went to obtain a pink certificate in order that he could evade the draft.
22. We reserved our determination.

The Issue

23. We found the only issue before us to be whether the determination of the Adjudicator was a sustainable one or whether the submissions made by the Appellant indicated that it was unsafe.

Decision

24. After careful consideration of the submissions and the determination we are satisfied that this appeal should be dismissed. While there may be some possible errors of fact in the conclusions reached by the Adjudicator at paragraph 16 we consider that even if the credibility of the Appellant is accepted in full that there is not a real risk or likelihood of persecution or maltreatment contrary to the ECHR on the return of this Appellant to Turkey.
25. The Appellant is in a situation where he is accepted as a homosexual who had suffered male rape by police officers in 1999/2000. There is no evidence to indicate that this action by the police officers was in any way condoned by their superiors and indeed on the scant objective evidence in relation to the gay cruise it would appear that such behaviour would not be condoned by the Turkish authorities. There is no evidence to suggest that an official complaint could not be lodged against what were clearly rogue officers endeavouring to threaten or intimidate the Appellant.
26. The issue before us however is that of the real risk or reasonable likelihood of the Appellant suffering such treatment on return to Turkey. Mr Siddle agrees that any risk in this situation would arise in the Appellant's attempts to obtain a "pink card". There is simply no objective evidence that was before the Adjudicator or us that would point to a risk to this Appellant of being detained when he attended a medical or went to register for his military service. It is correct that there may be some discriminatory behaviour but this would appear, from the objective evidence before us to fall well short of persecution or torture, inhumane or degrading treatment. Thus any risk of persecution or maltreatment in breach of Article 3 of the ECHR we consider is highly remote or fanciful and certainly not at the level of a real risk.
27. In relation to the claims under Article 8 and 14 of the ECHR we do not consider that there is any evidence to indicate a real risk to a breach of the Appellant's right to a private life. It appears that he conducted a gay relationship for some two years prior to leaving Turkey. Beyond this any breach of Article 8 or indeed of discriminatory behaviour on the basis of his sexuality we consider is outweighed by the valid immigration control obligations of the United Kingdom and that it would not be disproportionate to return the Appellant to Turkey.

Decision

28. The appeal is therefore dismissed. The determination of the Adjudicator we find to be a sustainable one.

**A R MACKEY
VICE PRESIDENT**