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Heard at Field House

On 19 February 2004

FO (Risk-Service as village guard) Turkey CG [2004] UKIAT 00042

IMMIGRATION APPEAL TRIBUNAL

Corrected transcript of decision given at hearing
Signed: 24.02.2004
Issued: 27.02.2004

Before:

Mr J Freeman (chairman)
Mr N Kumar JP

Between

APPELLANT

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation
For the appellant: Mr B Naumann, counsel instructed by Duncan Lewis & Co
For the respondent: Miss J Bracken, barrister employed by the Home Office

DETERMINATION AND REASONS

This is an appeal by a Kurdish citizen of Turkey against the decision of an adjudicator, Mrs TI Rabin, sitting at Taylor House on 16 January 2003, dismissing his appeal on both asylum and human rights grounds. Leave was given on grounds of appeal which included four points, and it is easiest to deal with the third and fourth first.

2. The fourth ground complains that the adjudicator failed to consider the appellant's case under articles 9 and 10 of the Human Rights Convention. This was not pursued before us by Mr Naumann, entirely realistically in the light of the decision of the Court of Appeal in **Ullah [2002] EWCA Civ 1856**. Ground 3 complains of the adjudicator's rejection of the appeal on article 8 grounds. Here she dealt with the evidence about the appellant's position here at paragraph 40:

The appellant stated that he had known his girlfriend for 8 months but that they had been close for two months. When asked how he saw their future he stated that he could not say what would happen and was unsure whether they would live together.

3. The adjudicator had already noted that the appellant had a brother and sister here, though the rest of his immediate family were in Turkey. That is criticised in the grounds of appeal, on the basis that the appellant's relationship with his girlfriend had lasted for eight months, though they had known each other for longer. Whatever the history of their relationship, it was not at that stage one which was on the evidence destined to be permanent and the appellant was quite frank with the adjudicator about that.

4. There is a suggestion in Mr Naumann's skeleton argument that things have now moved on to the stage where it has become a permanent relationship. That is not evidence. If this point were to have been pursued before us, the very least that would have been required would be an application for leave to produce statements from the appellant and his girlfriend to say what the state of affairs between them now was, on which they might well have been required to give oral evidence, subject to cross-examination. This has not been done. On the evidence before the adjudicator, she was fully entitled to find that there was no interference with the respect for family life enjoined by article 8. It follows that this ground cannot succeed.

5. So we turn back to grounds 1 and 2, which refer to the asylum and article 3 case. Ground 1 complains about the adjudicator's failure to consider submissions, written and oral. As far as that is concerned, Mr Naumann has been free to make whatever submissions he chose to us, and we have considered them. Ground 2 refers to failure to consider background evidence. Again the same applied before us.

6. The point on the asylum/article 3 case which understandably exercized the chairman who gave leave was the lack of clarity in the adjudicator's credibility findings. To give the full picture of that, we need to set out what she actually said, beginning with the appellant's history

14. The appellant stated that he became involved with HADEP at the age of 15. He stated that between 1991 and 1992 he was picked up by the police for questioning at least six times. In his statement he claimed that on some of those occasions he was simply questioned whilst on other occasions he was beaten and kicked. He also stated that he was pounded with water cannon. He stated that he was arrested on his own three times and on other occasions he was arrested with others. In his record of interview he claimed that he was detained for 10 hours.

15. The appellant stated that he was involved with violent activities for HADEP for some years. He maintained in his interview that he was involved in violence against the gendarmes in 1998. At the hearing he first claimed that he was involved in violent activities in 1990 and possibly 1991, but then admitted that he had never been involved in violent acts but had only been a back-up carrying. There appears to be a gap there which appears to relate to a claim that he had made that he had been carrying arms and ammunition.

16. The appellant stated that the first time he was arrested in 1991/1992 he was detained for a month. He said that he was arrested at the same time as a man named Hussain Coku who was released and found dead one month later in the mountains. He also stated that another person with whom he had been arrested on one occasion had been found dead after his release. The appellant stated that he went to Ankara in 1992 as he was tired of being constantly harassed and beaten by the police. He stated that he worked as a builders' labourer and remained politically active. He stated that he came to the notice of the police, although he was not arrested, and decided to return to Elbistan in March 1993. At the hearing the appellant stated that he had been arrested whilst in Ankara when delivering leaflets.

18. The appellant stated that he was arrested again one week after his return to Elbistan when he was taken from the family home by 10 or 15 soldiers. He stated that he was taken to the army barracks where he was detained for seven months and then released. He claimed that he was tortured by kicking, that he was put into a tank of excrement where his head was held under ten times. He later claimed that he was held upside down. He stated that he was detained for seven months without charge or the opportunity to see a lawyer. This was in contrast with his assertion at the hearing that he was sentenced to seven months imprisonment as a punishment for what he did.

19. The appellant stated that he left Elbistan again in October 1993 when he went to Izmir to stay with relatives. He claimed that he was actively involved with HADEP by distributing leaflets and putting up posters. His relatives were also involved and they were arrested. The appellant stated that he supported himself as a building labourer. He stated that he was arrested again in 1995 when he was held for a month before performing his military service.

20. The appellant claimed that he was ill-treated in the army as a result of being a Kurd. He said that he was only given menial tasks and was punished by being placed in solitary confinement. He stated that he was in the army for two years and left in August 1996. He stated he returned to Elbistan where he found life difficult and went to Russia to work as a labourer. He said that he remained there for four months but at the hearing he stated that he was in Russia for a year and that he left because he did not like the climate.

21. The appellant claimed that he returned to his village in March 1999 and that he was stopped by the gendarmes while visiting his father. He stated that his father persuaded the gendarmes that he would persuade the appellant to help the gendarmes and act as a village guard.

The adjudicator then gives details of the appellant's departure for this country, which took place in July 1999 with money provided by his father, who sent him here by way of Istanbul in February 2000.

7. The adjudicator dealt with the appellant's history at paragraphs 33 to 36. She did so in general terms as to inconsistencies, which do not assist us in seeing whether she was entitled to come to the decision which she did, or not. She concluded in general that she had grave doubts about the credibility of the appellant's claims of detention and ill-treatment. If that were the situation she was left in, then she was entitled in terms of the decision of the Court of Appeal in **Karanakaran [2000]**

Imm AR 271 to say so. However, if she really meant that she did not regard the appellant's history, or any part of it, as even reasonably likely to be true, then it would have been far more helpful if she had said that.

8. Miss Bracken has referred us to discrepancies which the adjudicator did pick out in relating the history:

at paragraph 15	in terms of whether the appellant had been involved in violence himself or not;
at paragraph 17	as to whether he had been arrested in Ankara in 1992 or not;
at paragraph 18	as to whether his seven months detention in 1993 had been of an administrative kind or under the sentence of a court, military or otherwise.

9. There is also the point made by the adjudicator at paragraph 34 about the appellant's lack of knowledge of HADEP. For this she gives no details at all which, as Miss Bracken acknowledges, is not satisfactory. Coming to the way in which we should approach the case, we have reluctantly reached the view that, despite the grave doubts described by the adjudicator, which may well have been justified, we ought to deal with this appeal on the basis of the appellant's case, taken at its highest.

10. It will have been noted, in the adjudicator's review of the evidence, at paragraph 18, that the appellant is quoted as saying in his interview that he had been involved in violence against the gendarmes in 1998. That is right as far as it goes: see question 40. However, anyone who reads on to question 41 will see that the appellant was saying that this had happened at the same time as the leader of HADEP, who he there spells Koku, was killed. Although the adjudicator's record of the appellant's oral evidence has him answering the question: "Is it right that you were involved in violent activities in 1998?" "Yes that is right", it is quite clear that the case that the appellant meant to put forward before the adjudicator did have him involved in that sort of activity around the time of the death of Koku (or Çoku, as it seems he should be spelt). This is reasonably clear from the appellant's first statement which is dated 12 October 2000.

11. In the appellant's second statement, which we are told was prepared in response to the refusal letter, it is made quite clear what his case was on this point.

As regards the date of the death of Koku, this was in 1993. I did not say in interview that this was in 1998. I was not asked in interview when Koku had been killed. I was asked when I started violent activity and I replied in 1998.

That year of 1998 has been crossed out by the person who took the statement or submitted it and replaced with '1988'. This certainly seems to fit in with the next sentence which reads:

I did not know why the record of interview states 1998 but I assume it was an error on the part of the interpreter who himself told me that he was from Cyprus. I would not have said Koku died in 1998 when I had said in an earlier statement that he died some time earlier.

The adjudicator clearly did not take any equivocation as to the date of those events against the appellant, and there is a basis for that allowance to be made, in the passages we have read out from the statement.

12. Before us the appellant sought to rely on what is described in the index to his latest bundle as an arrest warrant. It is a warrant on the face of it directing his arrest, but pursuant to a sentence of imprisonment for three years and five months for allowing his rifle and 20 rounds of ammunition, which he held as a village guard, to be taken by force from him by members of the PKK. This document was first seen by us at the hearing when we were referred to it. It had arrived at the Tribunal building on the day before the hearing, 18 February, having been sent on the 17th. The appellant's solicitors' explanation for that is as follows:

We sincerely apologise for the late submission. We are aware that the appellant's bundle of papers was to be served 14 days in advance of the hearing. We experienced problems in obtaining the arrest warrant which constitutes a significant part of the appellant's case. The arrest warrant was with the appellant's previous legal representatives and we did not receive it until 6 February 2004, please see attached evidence. This refers to a letter from the previous solicitors dated 5 February. Once we had received the arrest warrant we immediately took steps to obtain a translation which we received on 12 February 2004 and subsequently took instructions regarding the document on 13 February 2004.

13. The appellant's case, as put before us by Mr Naumann, was that he himself had produced the warrant, having presumably received it from Turkey, though it is not made clear how, shortly before the adjudicator hearing and handed it to his own counsel, who was not Mr Naumann. Since the appellant had not been able to produce a translation it is not surprising that that counsel did not seek to make any use of it before the adjudicator.

14. The main difficulty with the appellant's case on this point is this. The warrant as we have noted says that he had been sentenced to nearly 3½ years imprisonment for having his rifle and ammunition taken from him by force. The appellant said nothing at all about that to the adjudicator. Whether his counsel was prepared to use the warrant or not, we find that astonishing, as it would have been obvious to anyone that, if he were at risk of anything on return to Turkey, that sentence must have been the main ingredient.

15. The other strange thing about the warrant is that it has no date on it. There is a highly professional translation, from which we can see the date of the alleged offence and the year of its court registration; but nowhere on that translation, nor on the document itself, is there any date showing when it was issued. That is not something which we have come across before on any document purporting to emanate from Turkey, certainly not from any court.

16. Taking those points together, we regard this warrant as a document which cannot be relied on in any way. That is not however the end of the case, because Mr Naumann does rely on the appellant's history as a whole, in terms of his past work with HADEP and detentions. It is clear from the leading case, **ACDOG [2003] UKIAT 00034,** that a past history of political involvement and detention

may be relevant; but equally clear that it does not lead to a risk on return in every case. The individual history has to be considered.

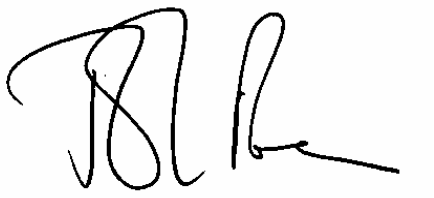
17. This appellant had worked for HADEP at only a low level, postering and leafletting, between 1993 and 1995. Apart from the evidence about what happened in 1999, his last hostile contact with the Turkish authorities had been when he was detained for one month in 1995. From that detention he was sent into military service; and, after he had completed his service, he was allowed to go free, to the extent that he was able to leave the country for Russia and return, apparently without problems as the adjudicator noted. We cannot see how that history, taken by itself, could possibly expose him to any real risk on return now. Any such possibility must turn on the events of April to July 1999, during which time, on the appellant's own account, he was left free on the basis that he served as a village guard.

18. Once the evidence about the warrant is rejected, this appellant's case has to be considered on the basis of whether there is now any real risk to somebody who absconded from service as a village guard in 1999. The only relevant evidence to which we have been referred on this point comes from the CIPU report of October 2003, at paragraph 5.76, which we shall set out:

In the past individuals recruited as village guards have sometimes been caught in the cross-fire. On the one hand their refusal to serve as village guards could be interpreted as implicit support for the PKK while on the other hand their acceptance of the office could make them PKK targets. Since the withdrawal of PKK fighters from Turkey at the end of 1999 there has been practically no further pressure to speak of from the PKK. Now that the recruitment of village guards has ceased this issue is no longer of any great importance. In the past refusal to serve as a village guard never used to lead to sanctions from the national authority. Pressure from local authorities following refusal to serve as a village guard can be avoided by settling elsewhere, for instance in one of the major cities outside south-east Turkey. This also applies to persons who are under pressure from the local community because they agreed in the past to serve as a village guard.

19. In the light of that passage, it is clear that Mr Naumann's submission that the appellant's having absconded from village guard service would expose him to a real risk from the authorities at the airport, on arrival in Turkey, must be regarded as not supported by anything in the background evidence. If there were any local risk at all, which must be doubtful at this distance in time, then the evidence shows that it could be avoided by relocation within Turkey.

That disposes of all the heads of the appellant's claim and the **appeal is dismissed.**



John Freeman