

Heard at Field House
On 2 September 2002

Appeal No HX/56384/2001

Sinan Tunc (Dev Sol) Turkey CG [2002] UKIAT 04883

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

... 17/10/2002

Before

Mr S L Batiste (Chairman)
Mr C Thursby

SINAN TUNC

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of Turkey, appeals, with leave, against the determination of an Adjudicator, Mrs F M Kempton, dismissing his appeal against the decision of the Respondent on 11 October 2001 to issue removal directions and refuse asylum
2. Mr A Devlin represented the Appellant. Mr R Pattison, a Home Office Presenting Officer, represented the Respondent.
3. The Adjudicator found the Appellant had been persecuted in the past, prior to leaving Turkey in 1999, as a consequence of his low level support and activities for Dev Sol (DHKP-C), a terrorist organisation committed to armed struggle, but if returned to Turkey now would not be at risk of persecution because he had a viable internal relocation option to another part of Turkey other than Trabzond. Leave to appeal was granted on the limited basis that it was arguable that the Appellant would still face some real risk on return to Istanbul on the basis of centrally held police records and this has to be decided on the basis of up-to-date evidence as to the current political developments in Turkey and police practice on return.
4. The Tribunal considered the objective material relating to the risk on return. The current CIPU report for April 2002 pulls together evidence from a variety of quoted

sources including Amnesty International and in our view offers a broad and measured perspective. The most relevant passages are from 5.80 to 5.84. They state as follows.

5.80 There is no organisation or government that consistently and formally monitors the treatment of returnees to Turkey..... in principle the Turkish police can questioning any deported citizen upon their arrival at the airport. This interrogation aims to establish the identity of the individual and also to check whether they have been implicated in any common-law case. In general there is no follow-up unless the individual is the subject of legal proceedings. If the returnee is known to the police for whatever reasons, he is possibly taken into custody for more interviews. Amnesty International in Germany takes the view that while it is still true that most asylum seekers all returnees are released after the routine interview, there has been increasing number of cases where returned asylum seekers were picked up later by unknown men and beaten up or arrested by the police and taken into police custody. The report goes on to say that this mistreatment is carried out in order to obtain confessions from suspected persons. 5.81 The German immigration authorities state that in general rejected asylum seekers returning to Turkey do not risk persecution. A rejected asylum seeker returning voluntarily can pass through entry control unhindered provided that he/she is in possession of a valid Turkish travel document. The fact that the returnee is a failed asylum seeker does not lead to different treatment. The Turkish authorities are well aware of the fact that many Turkish nationals apply for asylum only for the purpose of getting temporary authorisation to remain in Germany.....The Turkish government now recognised that the overwhelming majority of Turkish nationals who had applied for asylum overseas had done so purely for economic reasons. They were of no interest to Turkish government and would not be imprisoned on return. 5.83 Returnees without documents will be questioned. This is likely to be an in-depth questioning by the Turkish border police and is to be distinguished from the routine identity check on arrival. The German authorities state that, as a rule, the questions refer to personal data, date and the reasons for departing Turkey, possible criminal record in Germany and contacts with illegal Turkish organisations. In some cases further enquiries will be made via other offices (e.g. prosecutor's office, registrar's office at the last Turkish residence of the returnee) in order to find out if the returnee is liable to prosecution for a criminal offence. These enquiries can take from several hours to several days, during which time the returnee will be kept in custody. Currently available information indicates that undocumented returnees generally are not ill treated while being kept in custody. However ill treatment cannot be ruled out in cases where returnees are suspected separatists. 5.84 Amnesty International in Germany states, in relation to returns from Germany, that the Turkish authorities are more likely to be suspicious in cases where a person returning to Turkey is not carrying any valid personal documents in accordance with regulations, or is carrying documents indicating asylum proceedings abroad. 5.85 Being of Kurdish origin does not in itself constitute a higher risk of inhuman treatment. Everything depends on the individual and his activities in Turkey and abroad. The Dutch Ministry of Foreign Affairs notes that PKK activist and sympathisers who are thought to be of great interest to the Turkish authorities risk being insulted, threatened, maltreated or tortured during the questioning. A representative of the Turkish Human Rights Foundation stated

that a clear shift from physical to more psychological pressure on detainees had recently been observed

5. Mr Pattison referred us to paragraph 5.91, which related to the return under UNHCR auspices of Turkish nationals from northern Iraq. It reported that UNHCR was satisfied that returnees as a category have not been subject of persecution or reprisals in Turkey. However this is not of particular significance in this appeal, where the Appellant is claiming to have been persecuted in the past for his Dev Sol supporter and to be likely to face further similar ill-treatment on return.
6. Mr Pattison also referred us to paragraph 5.87 and annex D, which showed that the number of reported incidents of ill-treatment on return over some years, was extremely small when compared to the overall number of returnees. He argued that even if these statistics understated the overall number of incidents, if the reality was much greater it would by now have become apparent through the work of the international agencies. Mr Devlin responded by saying that there was no proper monitoring of the ill-treatment of returnees and that again in the Appellant was not a returnee per se but a person suspected of Dev Sol activities and thereby at much greater risk.
7. Annex B describes the Dev Sol as seeking to overthrow the existing Turkish system of government by armed revolution and to replace it with a Marxist Leninist state. Its terrorist operations are aimed in particular at the Turkish security forces and public figures, as well as bodies seen by the group as symbols of imperialism
8. Our assessment of this material identifies a distinction in terms of risk between a failed asylum seeker returning undocumented and one with proper and genuine papers. The latter will be able to pass through entry control unhindered. The former will face in-depth questioning by the Turkish border police, during which enquiries will be made of other databases in order to establish their identity and history. Even then the risk of material ill-treatment is statistically very small. However if an individual falls within a category of particular adverse interest to the Turkish authorities, by reason of connection to a separatist organisation or a terrorist group, then the risk that the in-depth investigation may extend to ill-treatment and torture cannot be ruled out. However, the fact that something that cannot be ruled out is a more stringent test than the test of real risk, applicable in asylum and human rights appeals. Each case must therefore be assessed on its own merits to see whether the level of involvement and suspicion found to be credible by an Adjudicator supports a valid claim for international protection.
9. In this appeal the Adjudicator made a number of positive credibility findings, which have not since been challenged. She accepted that the Appellant was a supporter of Dev Sol and of its basic aims though he was a low level supporter whose involvement consisted mainly of fly posting and distributing leaflets and attending demonstrations. However, he had been picked up by the police on two or three occasions and tortured and held for some days before being taken before a prosecutor and released due to lack of evidence. The Adjudicator accepted that these detentions were due to his perceived support for Dev Sol. On one occasion the police had obtained an extension of one day in detention from a prosecutor, but they were never able to pin a crime upon him. The Adjudicator found that this constituted past persecution but that the authorities had no continuing interest in him.

10. The Adjudicator then made some rather contradictory conclusions. She said that on return to Istanbul he would be perceived as an undocumented failed asylum seeker and would be subject to questioning and as a result of the questioning it would become clear that he had previously been detained by the police. She continued "In those circumstances there is a serious possibility that he would suffer further persecution by reason of being a failed asylum seeker even if he were to be returned to a large city such as Istanbul. He would be arrested at the airport and taken into custody immediately. He would be liable to very close questioning. He could be held for a number of hours or even the number of days. However given that there are no outstanding warrants against the Appellant then there is no reason why the authorities should take any further interest in him after he has been questioned."
11. Quite what that means is not clear. However the Tribunal considers that the Adjudicator was in error in concluding that the lack of outstanding warrants would in itself indicate that the authorities had no further interest in the Appellant. It is a relevant factor but only one amongst others. She had already found that he had been detained up to and in 1999 specifically because of suspicion surrounding his Dev Sol activities. He had actually been taken to a prosecutor on several occasions. Leave had been obtained from a prosecutor to extend his detention on one occasion. He had been released for lack of evidence by the prosecutor, presumably against the wishes of the police or they would have released him themselves. The records of his detentions would now be available centrally to the border police as Istanbul airport. Whatever the reality of his activities for Dev Sol, the positive findings of fact by the Adjudicator relating to his history indicate a higher level of interest in him by the authorities than would be consistent with merely low level support. The Appellant claimed that at his last arrest he had been accused of fundraising for Dev Sol. Perhaps this is why a higher level of interest had been shown in him than would otherwise be justified but one cannot speculate.
12. However, given the positive findings of credibility by the Adjudicator, she erred in concluding that the authorities would had no continuing adverse interest in the Appellant concerning his linkage with Dev Sol. The authorities take Dev Sol very seriously indeed and are entitled to do so because of their terrorist activities though that does not justify torture by them of suspects. The Appellant's risk profile on return to Istanbul airport would therefore, on the particular facts accepted by the Adjudicator as credible, be significantly higher than for example for a returnee, who had been subjected in the past only to untargeted arrests and harassment and had not been linked by the authorities in any meaningful way with a specific terrorist organisation. On the facts of this appeal as found by the Adjudicator, we conclude that the Appellant would be at real risk of persecution and of treatment in breach of Article 3 on return to Istanbul airport.
13. We therefore allow this appeal for asylum and under Article 3 of the 1951 Convention

Spencer Batiste
Vice-President