

Heard at Field House

On 26 July 2004

CE (KK Confirmed -  
McDowall Report) Turkey CG  
[2004] UKIAT 00233

## **IMMIGRATION APPEAL TRIBUNAL**

notified:

Date Determination

20 August 2004

Decision reserved

**Before**

:

**Mr J Barnes - Vice President**  
**Mrs R M Bray**

**Between**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

### **Representation**

For the Appellant: Mr M Hinsworth, Counsel instructed by YVA,  
Solicitors

For the Respondent: Mr A Ironside, Home Office Presenting  
Officer

### **DETERMINATION AND REASONS**

1. The Appellant is a citizen of Turkey of Kurdish ethnicity born on 15 May 1975 who arrived in the United Kingdom on 14 November 1997 and claimed asylum on the same day. He was interviewed also on that day but for reasons to which we are not privy nothing further transpired until on 5 April 2001 the Secretary of State refused his application for the reasons set out in a letter of that date. On 8 May 2001 the Secretary of State

issued directions for his removal to Turkey following refusal of leave to enter after refusal of his asylum application. The Appellant appealed against that decision on asylum and human rights grounds but, again for reasons to which we are not privy, it was not until 18 August 2003 over two years later that the Secretary of State sent the statutory bundle to the Immigration Appellate Authority in order to initiate the appeal process. His appeal was heard on 10 October 2003 by Mr R D Crawford, an Adjudicator, who dismissed his appeal. The Appellant now appeals with permission to the Tribunal against that decision. The Adjudicator summarises the Appellant's case from his written statement at paragraph 14 of his Determination in the following terms:

"He is an Alevi Kurd from the Bingol area of Turkey. He was detained for a week and beaten on the soles of his feet on 1 May 1995 by the Turkish authorities. He was beaten again in June 1997 when Kurdish literature and music was found in his car. He was detained for four days on his second detention. He was detained for a third time on 10 August 1997 when he was questioned about his political activities and those of his friends. Two of his cousins [ ] and [ ] are separatists and members of the PKK. [ ] codenamed Zerdes is the man shown on the video asking to become area commander for Bingol. [ ] and [ ] lived next door to the Appellant at his village in Turkey where they were farmers. The Appellant fled his village in 1994 and went to Istanbul where he stayed. The Appellant sympathised with the aims and objectives of the PKK and upon arriving in the United Kingdom became involved with the PSK. The Appellant attends Kurdish cultural centres and events. When Abdullah Ocalan was detained in Turkey the Appellant demonstrated in London.

The Appellant used to attend a Kurdish Centre in Istanbul and was asked by the police to become an informer against the PKK on behalf of the authorities. The Appellant refused to assist the authorities and believes if he is returned to Turkey he will be targeted by the Turkish government because of the activities of his cousins as active PKK members. The Appellant left Turkey and travelled to the United Kingdom by lorry clandestinely. He arrived in the United Kingdom on 14 November 1997.

In the year 2002 the Appellant's father received a letter from state security informing him that he is to be prosecuted for assisting the PKK. Because he is disabled he has not been imprisoned but he fears for the future as he has provided food and shelter for the PKK."

2. The Adjudicator then records at paragraph 15 the evidence at the hearing before him as follows:

"In evidence in chief the Appellant adopted his written statement and gave evidence as to the contents of the video. He said that he received the video about a month ago. He confirmed he had been in Istanbul for most of the time since 1994, although he occasionally went back to his village in the Bingol district. He told Ms Dickinson [the Presenting Officer] that he did national service beginning in 1995 for 19 months. He used to meet up with [ ] in Istanbul. He confirmed the date of his three detentions as he stated in his written statement and accepts that he was never charged nor brought before a court. He told Ms Dickinson that he assisted the PKK from 1992 to 1994 by giving them food and drink. He accepted that he only became interested in PSK activities in London. He has not been involved in PSK since opening his shop in Southport. He used to visit the PSK centre in London. Ms Dickinson asked the Appellant why he did not mention his father's involvement with the PUK in interview but only referred to that involvement in his statement. The Appellant said that he did not know why he did not mention it in his interview."

3. The Appellant also said that he had spoken to his father and mother in Turkey from the United Kingdom and that the authorities were still looking for him; soldiers had been asking about his whereabouts and those of [ ] and [ ], last year in their village.
4. The Adjudicator accepted part of the Appellant's claims. He noted that it was nine years since the Appellant was himself involved in assisting the PKK in his home village by providing food and shelter for them and he accepted that [ ] and [ ] were low level PKK activists in the 1990s. He did not believe the Appellant's claims that his father had been involved with the PKK noting that at interview (A8 and A9) when the Appellant, who said he lived with his parents and siblings with an uncle nearby, was asked whether any member of the immediate family was involved with separatist parties his response was that two paternal cousins were involved with the PKK and that the family suffered harassment from the army and the special team who would come and question them about his two cousins. Although he had the opportunity at that interview to say whether other immediate family members were involved with the PKK it was not until much later that he made any such claim in respect of his father and the Adjudicator was of the view that this was something that he would have expected the Appellant to mention from the outset.
5. The Adjudicator was not prepared to give any weight to the video and transcript which had been produced. He deals with this issue at paragraph 31 as follows:

"The video purports to show events at the 1996 PKK conference. Apart from Abdullah Ocalan the faces of approximately twelve to fifteen supposed PKK activists are portrayed. I find that this video would have been closely guarded by the PKK. If it fell into the wrong hands, such as the Turkish government security service, all people portrayed would be at grave risk of torture or worse. I find that it is highly unlikely that such a video would be brought out of Turkey and handed over to the Appellant to assist the Appellant's asylum claim. The Appellant says he received the video about a month ago from a PKK guerrilla who smuggled it out of Turkey. By handing this video to the Appellant to assist his asylum claim this guerrilla would be taking a risk that all the men portrayed on the video might be exposed. This is not a risk which I believe the PKK would take to support one asylum claim. I have grave doubts as to the genuineness of the video and whether it truly portrays events which took place in 1996 at the PKK conference. I do not accept, on the basis of this video, that the Appellant's cousin was appointed commander of the Bingol district in Turkey by Abdullah Ocalan. I find that the video has been produced to convince me that the level of activity of the Appellant's cousins in the PKK was at a higher level than I am prepared to accept."

6. We note that at no point in the interview is there any suggestion that either of his paternal cousins was a high ranking member of the PKK and the most that he says as to their involvement is "Two paternal cousins involved with PKK" and, a little later, "They would come and question them [other family members] about my two cousins who were involved with the PKK."
7. The third issue which the Adjudicator takes into account in arriving at his credibility findings is his delay in leaving Turkey which he deals with at paragraph 32 in the following terms:

"The Appellant stayed in Turkey for three months after being asked to be an informer for the Turkish government. He was effectively hiding from the authorities. When he was detained on 10 August 1997 the Appellant was asked to help the government security forces. He agreed to do so. They thought he was going to assist. When he initially went into hiding they would not have been looking for him as he did not say that he would not co-operate. There would be no reason for the authorities to search for him initially. There would certainly be no need to keep him under surveillance. I find that if the Appellant had wanted to leave Turkey he could have done so immediately after his third detention or within a short period of it. A genuine refugee, in fear of his life, would leave Turkey immediately and not hang around for three months so that the

authorities would realise he was not going to help him [sic] and begin to search for him.”

8. The Adjudicator noted that the first two detentions were not due to the Appellant’s political activities but rather because he had attended a May Day celebration on the first occasion when he had been arrested in a general round up, and on the second occasion he was stopped in a road check and detained because he was in possession of Kurdish literature and music. It is difficult to know whether the third detention in August 1997 can be properly regarded as a detention at all on the evidence before us. At interview the Appellant said that he was simply stopped in the street and asked to become an informer in a conversation which last about an hour before being released to proceed on his way. He described the incident at interview as follows:

“On 10 August 1997 the police took me from the café to the outskirts of the city and there I was questioned about the Kurdish youths activities, they wanted me to give them information about these things, about what kind of activities, associations involved with. I was also questioned if I had any friends involved in illegal activities and organisations and they wanted me to help them. If I helped them they will stop harassing them [sic] and be protected by the police.”

A little later he said:

“If you accept our offer come to the police station and we will discuss the matter, tell you how these things operate. I thought about it for a long time, if I had accepted their offer I would have been a traitor to my country, to my friends, to my people and I will live with this...”

He said it took about a month for him to reach this decision.

9. The Adjudicator summarised the position at paragraphs 34 and 35 of his Determination as follows:

“34. For the avoidance of doubt I find as follows:

- (i) The Appellant was a Kurd;
- ii) Two of the Appellant’s reasonably close relatives were active in the PKK;
- (iii) I do not accept that the Appellant’s father was active in the PKK;

- (iv) I do not accept the Appellant was being searched for by the authorities from August until November 1997;
- (v) The Appellant's assistance of the PKK was low level in providing food and shelter;
- (vi) I do not accept that a close relative of the Appellant was a commander in the Bingol area for the PKK.
- (vii) I do not accept that the Appellant has made himself a target of the Turkish authorities by any activities he has engaged in in the United Kingdom."

"35 I find that any little interest the Turkish authorities might have had in the Appellant, will, by the passage of time, have now diminished to nothing. I do not accept that the Appellant was a target, in any way, of the Turkish authorities."

10. The grounds of appeal seek to challenge the Adjudicator's findings on two limited bases only. The first is that he erred in law in rejecting the video evidence which was relevant to establish the level of involvement of one of his family members. The grounds of appeal, which Mr Himsworth had settled and upon which he relied before us, criticised the findings in paragraph 31 because the Adjudicator failed to specify why he considered the risk to the PKK was so great and submitted that they would be prepared to indulge in any risk involved by giving the video to one of their members to bring to the cousin of another member for limited use in an asylum appeal in this country. Further it was averred that a video of the type shown was inherently likely to be distributed, albeit perhaps in small numbers amongst appropriate personnel, and that given the level of his cousin's involvement it was more likely that he could persuade them to release the video for the benefit of the Appellant. Finally it was submitted that there was no reason why this specific video might not have been deemed suitable for 'general release' because (for instance) the people shown had consented or had already been prosecuted and, finally, because it purported to show the 1996 PKK conference it was quite possible that the video might have been released because of its age. We understood from Mr Himsworth that these were all submission which he had made to the Adjudicator.
11. The other ground of appeal was that the Adjudicator had made erroneous and contradictory assessments of the evidence. The basis for this challenge was that in paragraph 13 of the Determination the following passage appears:

“The second man on the video, the Appellant says is [ ], who is the Appellant’s nephew. [ ] has been granted asylum by the Home Office on 28 April 2003. In the video [ ] asks Abdullah Ocalan for the commandership of the Bingol area on behalf of the PKK.”

12. Dealing first with that last challenge, it is undoubtedly correct that the Adjudicator has made mistakes in the short passage which we have quoted but as will be seen from the summary of the Appellant’s case at paragraph 14 of the Determination which we have quoted earlier in this Determination, it is quite clear that the Adjudicator did clearly understand the basis of the Appellant’s claims and that [ ] was somebody distinct from [ ] who had later come to the United Kingdom and been granted asylum. It seems to us that the reference to [ ] in the video in paragraph 13 is simply a slip of the pen and it does not in our view have any effect upon the outcome of the Adjudicator’s deliberations or demonstrate a lack of understanding of the essential basis of the Appellant’s claim as paragraph 14 and the remainder of the Determination makes quite clear.
13. So far as the main ground of appeal relating to the video is concerned, we have carefully considered all that Mr Himsworth urges upon us, as no doubt did the Adjudicator. But it would be appropriate to interfere with the Adjudicator’s findings in this respect only if we were satisfied that he had erred in law in his approach to the credibility findings. In this respect it is not appropriate to look at specific findings in isolation but rather to look at the totality of the findings. The first adverse finding is in relation to the late claim that his father had been involved in the PKK. That finding is not the subject of challenge and seems perfectly open to the Adjudicator on the evidence which was before him for the reasons which he gives. The Adjudicator also disbelieved the Appellant’s claims that he was in fear of arrest for the three months prior to leaving Turkey and accepted the force of the Secretary of State’s submission in this respect that delay of that nature was hardly appropriate in someone who had a real fear of persecution. Additionally, we note from the Appellant’s own description of events in his interview, that he pondered the position for about a month before coming to any conclusion. It does not seem to us that there is any error on the part of the Adjudicator in taking that point against the Appellant and, indeed, it is again not the subject of challenge before us. There are, therefore, two bases upon which the Appellant’s credibility has already been to some extent undermined. It is appropriate to consider the Adjudicator’s findings in respect of the video against that background. Whilst it would have been open to the Adjudicator to have reached a different conclusion, for the reasons which Mr Himsworth had urged upon him, we think Mr Ironside’s submission that those reasons are in themselves highly speculative and unsupported by any

objective evidence is well made. There is also force in his submission that what the cousin in claimed to say in the transcript of the video is supportive of the Adjudicator's reasoning. The passage concerned is where he is asked why he cannot be active in the metropolitan area and he answered that he fears being decoded, by which we assume he means being discovered, "As I was involved in illegal activities in Istanbul for many years and many people know me. I fear that I will bring harm to my party. I wish to be given the commandership of the Bingol area as I know the area very well." We do not, having given due consideration to the submissions made to us, consider that there is any error of law on the part of the Adjudicator in his approach to his findings in respect of that part of the evidence. His reasoning is clear and it seems to us, cogent. It was in our judgment a finding which was properly open to him on the totality of the evidence.

14. The Adjudicator then went on to consider whether the Appellant would have a real risk of persecution or treatment in breach of his protected human rights under Article 3 of the European Convention if then returned to Turkey. He concluded that he did not but that is a line of argument which has again been run before us with our consent by both parties in the light of the most recent guidance on the issues as to risk on return.
15. The Adjudicator considered this issue against the Tribunal Determinations in **Hayser** (which he wrongly refers to as **Hasysal**) and **Ay**. The latter decision is now a reported case and has accordingly been anonymised. It is now known by the acronym **ACDOG** or more properly, as **[2003] UKIAT 00034 A (Turkey) Et al.** It indicates a number of the issues which it may be pertinent to consider in Turkish asylum appeals at paragraph 46 of the determination, making it clear that these are simply factors which "inexhaustively we consider to be material in giving rise to potential suspicion in the minds of the authorities concerning a particular Claimant." On the Adjudicator's factual findings the Appellant could not in our judgment be said to be particularly engaged in the majority of those factors although one of them is whether the Appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP.
16. The Adjudicator considered those matters as he makes clear in his Determination and concluded that on the facts they were not such as to be reasonably likely to bring the Appellant to the adverse attention of the authorities and, again, we see no arguable basis on which the Adjudicator was not justified in making that finding on the accepted evidence.
17. Since that time, there have been a number of other important Tribunal decisions dealing particularly with the risk at Istanbul airport and what is reasonably likely to be revealed by the



computer system there known as GBTS. This hinges upon the distinction in Turkish law between detention and arrest, the latter being something which requires a court decision and it was held in **HO (National Records) Turkey CG [2004] UKIAT 0038** that it is only the latter type of arrest which will be recorded on the GBTS system having regard to the extensive documentary evidence considered in that appeal. Since then a contrary opinion has been expressed by Mr McDowall in a note dated March 2004 which he accepts is largely speculative and inferential on his part. That report was carefully considered by the Tribunal in **KK (GBTS - Other Information Systems - McDowall) [2004] UKIAT 00177**. At paragraph 23 of that Determination the Tribunal carefully considers Mr McDowall's note and concludes that it is not one to which any weight should be given, as it is based in part on speculation and in part on information from parties about whom very little information is provided. We do not need to set out what is said there at length but we adopt that reasoning for the purposes of this decision. The most recent case is **MS (Turkey GBTS Info at Borders) Turkey [2004] UKIAT 00192** which was promulgated on 13 July 2004. In that decision the Tribunal reviews at length the reports of Mr Kanat, a Turkish defence lawyer, as well as a report from Ms Sheri Laizer dated 16 March 2004 and the 18 March 2004 report from Mr McDowall which had also been considered in **KK**. After carefully considering those three reports at paragraphs 21 to 26 (and again we adopt the reasoning of the Tribunal in that appeal), the Tribunal then concludes at paragraph 27:

"We feel that we are driven to the conclusion by all the material that we have heard some of which comes from sources entirely unconnected with the authorities in Turkey, that on arrival in Turkey a person will be screened by being checked on the GBTS. We have neither information, nor any reason to suppose, that any other means of checking up is used."

18. **MS** then goes on to consider what is meant by undocumented travel which it is suggested may lead to detention for checks to be made from sources other than the GBTS. Based on consideration of the CIPU Report and the Report of the German Immigration Authority of July 1999, the Tribunal held that undocumented returnees did not include those who were travelling on a valid Turkish travel document either held in their own right or comprising a one-way emergency travel document issued by the Turkish Consul General in London. A person in possession of either of those documents would not be likely to be given the in-depth questioning referred to and, as the Tribunal rightly points out there it is a matter for the Claimant if he wishes to obtain his own passport from the Turkish Embassy since it is established that Turkey gives passports to undocumented would be Turkish returnees, even though the

one-way emergency travel document referred to would equally be a valid Turkish travel document.

19. In the Appellant's bundle there were, in addition to a later note by Mr McDowall to which we shall refer below, the generic report on Turkey of January 2004 by Sheri Laizer and an addendum to that report of April 2004. Mr Himsworth was of the view that this was not the report of 16 March 2004 referred to in **MS** and he relied on paragraph 3(iii) talking of parallel methods of record keeping in suspected dissidents in addition to the GBTS system. That sub-paragraph was an assertion by Sheri Laizer that her own name appeared in the GBTS system at the airport in Istanbul in 1998 when she was sent to Turkey to report for the BBC. She said her name appeared there primarily because she had one time worked in a paid and lawful capacity as the co-ordinator of a London based Kurdish charity which had come under PKK political control subsequently. She says that the Turkish Interior Ministry entered her name and that of 55 other non-Turkish citizens associated with Kurdish and Turkish refugees and exiles and that their names were printed in the Turkish press and entered into the GBTS computer system as "undesirables" to be refused entry to Turkey. It was Mr Himsworth's submission that this evidence demonstrated that the information provided by the Turkish authorities on 3 September 2003 to the Foreign and Commonwealth Office in relation to the GBTS system was inaccurate and that the GBTS system could include persons other than those specified as being sought for arrest. There are in our view difficulties with this submission. Ms Laizer refers to something which occurred in August 1998 and says that she then made representations to the Turkish Foreign and Interior Ministries which she believed led to a resolution of the matter finally in 2000. Even assuming, therefore, that Ms Laizer is right in saying that her name was on the GBTS list and not on some parallel system for identifying those considered undesirable aliens by the Turkish government, the matter had been resolved by 2000 and is therefore no evidence that what the Turkish government said to the Foreign and Commonwealth Office in September 2003 does not represent the current situation and extent of the GBTS system.
20. The second report on which Mr Himsworth relied was Mr McDowall's "revised" note on the GBTS (Turkey's General Information Gathering System) which is dated 24 May 2004.
21. He refers to paragraph 5.56 and 5.57 of the April 2004 CIPU Report which deals with the Swiss Organisation for Refugees and reads as follows:

"The report continues "It should be mentioned that in addition to the GTBS Central Information System, the various security forces each have their own information systems...they include the registers of the police, the anti-

terrorist department, the gendarmerie, Jitem, the military secret service etc. It is therefore perfectly possible for someone not to be listed on the central system but to be sought by the anti-terrorist unit."

At 5.57 it further states that:

"Neither can the absence of a data entry or current investigation or the lack of a passport ban be taken as evidence that an individual is not in danger. Despite the absence of entries in the central information system, the individual concerned might be listed on one of the other information systems. This must certainly be assumed in the case of individuals who have already been taken into custody by the police, gendarmerie or some other branch of the security forces in the past."

22. Nevertheless Mr McDowall makes it clear that his views still remain speculative as to what will be on any such other registers. He says:

"My reasons for doubt and the relevant evidence are to some extent empirical and seem to be somewhat different from the qualifications now set out in [April 2004 CIPU]; they are set out below in order to indicate that much of one's approach to this issue must be based upon commonsense inferences drawn from what we really know about how the security forces operate in Turkey."

23. He then refers to what are said to be two new sources of evidence as to the risks to returned failed asylum seekers. The first is a report by the Kurdish Human Rights Project, a non-governmental organisation in Turkey, to a firm of London solicitors but from what he quotes it is quickly apparent that what is being said there is again in many instances speculative and based on impressions of what is meant by Amnesty International Reports and what was said by a former paralegal employee of another London based solicitor's firm which had previously been relied on by Mr McDowall in his earlier report. That is dealt with in **KK** at paragraph 23(i) in relation to the weight which is to be given to such a source where it is noted that there is nothing to show the expertise of that source, what were his own sources for his comments of their reliability, and that was there claimed contradicted Mr McDowall's previously expressed views in November 2002 that a large proportion of detentions in police stations go unrecorded in a formal sense. In other words, it adds nothing from being quoted from yet another source as a basis on which that other source has worked. It does not seem to us that this further evidence takes matters beyond the consideration which has already been given by the Tribunal to the contents of the GBTS system but merely suggests that removal from the system may not be as efficient

as is claimed by the Turkish authorities in that they occasionally use it as a pretext for detaining people whom they have reason to believe are about to commit public order crimes.

24. The second source on which Mr McDowall now relies is a statement from an asylum seeker relating to his experiences during military service in Erzerum province in 1990/91. That report claims that at that time the particular gendarmerie with which he was concerned kept a colour coded filing system which included one relating to political offences and which was sent to a central system in Ankara and in Erzerum province. Mr McDowall assumes that such records are now computer based and that jeeps equipped with computers may well be used at checkpoints as is the case in the Israeli occupied territories. That is clearly speculation on his part and pre-supposes that even if one accepts the uncorroborated observations of an unidentified asylum seeker made many years ago, that such a system continues in operation and has been brought up to date. In our view this latest note is properly to be regarded as subject to the strictures accorded to the earlier note by the Tribunal in **KK** and we place little weight upon it as being highly speculative in nature and unsupported by any cogent evidence.
25. There is nothing in this additional information to persuade us that it is appropriate to revise the views which the Tribunal has expressed as to the nature of the information recorded on the GBTS system or the position on arrival at Istanbul airport.
26. It has, of course, always been the case that where it is accepted that there is a long record of ill-treatment of an individual claimant in his home area, then there will be an arguable issue as to whether on the specific facts a real risk of a repetition of such treatment will continue to exist there, although it may well be that in the majority of cases those who run no real risk on arrival at Istanbul and are able to pass safely through into Turkey, will be able safely and reasonably to relocate to another part of that vast country in accordance with the ratio of the Tribunal Determination in **LT** (internal flight - registration system) **Turkey CG [2004] UKIAT 00175**.
27. Turning to the situation of this particular Appellant, on the findings of the Adjudicator there have been two minor detentions for a short period which have resulted in release without charge or further surveillance. One was a round up arrest including many others and the other was a random car check so that in neither case was the Appellant specifically targeted by the authorities. Seven years ago he was asked to become an informer and then left the country shortly thereafter. His claims of subsequent police interest in him have been rejected by the Adjudicator.

28. On that evidence there is no reasonable likelihood that he will be detained at Istanbul on return as he will not appear on the GBTS system. He has lived in Istanbul, which is a vast city, from 1994 onwards and there is no arguable basis for saying that the authorities have any current adverse interest in him. There is no persistent course of conduct on the part of the authorities to be guarded against. He says that his family relationship with cousins who were PKK members was well-known in his home village but there is no suggestion in his evidence that this relationship resulted in any adverse attention once he had removed to Istanbul. Even were it the case that one of those cousins was a high ranking member of the PKK, that was a situation which had existed on his claims since May 1996 – the claimed date of the PKK congress – without it leading to any adverse interest in him prior to his departure in November 1997. To say that it would now lead to such an adverse interest is no more than speculation on his part.
29. We are therefore satisfied that not only is the Adjudicator's finding sustainable but that even if it were not and taking into account the additional evidence relating to the GBTS system to which we have referred, there would on the facts of this case be no reasonable likelihood of persecution of the Appellant for a Convention reason of treatment in breach of his protected Article 3 rights if he were now returned to Turkey.
30. For the above reasons this appeal is dismissed.

**J BARNES  
VICE PRESIDENT**