

LSH
Heard at: Field House
On 13 May 2004

MS (Turkey GBTS Info at
Borders) Turkey [2004]
UKIAT 00192

IMMIGRATION APPEAL TRIBUNAL

notified:

Date Determination

2004.....

.....13th July

Before

:

His Honour Judge N Ainley (Vice President)
Mr K Kimnell

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. This is an appeal by the claimant from the determination of Miss Sawetz sitting as an Adjudicator on 15 April 2001.
2. The claimant is a citizen of Turkey who is an Alevi Kurd from the South East of that country.
3. The Adjudicator found that he would not be at real risk on return to Turkey despite the fact that she found his evidence about past mistreatment to be credible. The grounds of appeal state that the Adjudicator, in coming to that finding, did not give sufficient weight, or gave insufficient detail for one to be sure that she had given sufficient weight, to the relevance to risk on return of the experiences that the claimant had actually had.

4. Having heard submissions on this point and having considered the grounds of appeal, which are necessarily lengthy in this case, we have come to this conclusion that there is substance in those criticisms and that it is difficult to tell from the determination whether the Adjudicator did give the weight that was appropriate to the claimant's account.
5. The Adjudicator is not to be criticised for making her findings in the way that she did. This determination was arrived at a long time ago, and there have been many cases before the Tribunal since then which have dealt with the vexed issue of the risks facing Turks who are being returned to Turkey and who have been mistreated by the authorities in the past.
6. The claimant was born on 21 April 1978. His father was a sympathiser with the PKK and sheltered members of the PKK who used to visit his home in the vicinity of Diyarbakir in South East Turkey. His father was detained and tortured by the authorities as a result of his activities.
7. The claimant himself has never been a member of any political party, although before 1996 he used to attend HADEP meetings, cleaning up and making tea.
8. During that year he was detained twice because of his political sympathies. His first detention led to him undergoing 7 days of torture whilst in the hands of the authorities. He was released entirely because he had a maternal uncle who was the mayor of a town called Narli and was able to help him. His fingerprints were taken before his release.
9. After his release the local gendarmes, who obviously knew who he was, used to abuse him verbally when they saw him, and it is obvious that he was a person who remained under suspicion, at least in their eyes.
10. His second detention led to him again being beaten and tortured in order to extract a confession of political involvement. This time he was tortured for about 8 days before he was released. He appears to have been released because the authorities accepted there was no evidence against him that was going to be capable of leading to any criminal charges.
11. After his release he went to Istanbul in order to try and escape the pressure that he felt under at home and no doubt to make a new start. He got a job working in a textile company where he remained for 4 or 5 months. He was then unemployed for a while but was given work through a friend in a coffee house. He remained working there for some time and obviously felt sufficiently secure to make a short visit home. It does not appear that anything untoward happened until October 1998.

12. On that occasion there was a police sweep through the café in which he was working. ID cards were produced and it was discovered by the authorities that he was evading the draft. He was taken back to his home area and was detained for 45 days before being sent off for his military service. During the time of his detention it was made plain to him that the authorities were of the view that he had been helping the PKK. He did not know what records had been kept on him, but it appeared that some records must have been for these accusations to be made against him.
13. He was released from military service in May 2000 and returned to his home village; but the position there soon became intolerable as the gendarmes continued to harass and ask other villagers about his and his father's whereabouts. He went into hiding at his uncle's home in another village, but only for a short period, before returning to Istanbul.
14. In September 2000, when he was back working at the same café, he was arrested again and, although he was only detained for a day, what the authorities said to him made it clear that they were aware of his previous detentions. He said to them that that was all in the past and he was not involved in anything political any more and just wanted to carry on working. He was released within a day and during his detention there is no suggestion that he was tortured. A few days later he telephoned home and was advised by his father that the gendarmes were maintaining an interest in him. He decided that he would not go back home because he was afraid of being detained and tortured again, went into hiding, and then left Turkey about 2½ months later. He arrived in the United Kingdom on 1 December 2000 and claimed asylum.
15. He says that with this past he would be at real risk of being detained by the authorities if he were to be returned to Turkey. The authorities seem to know who he is on a nationwide basis because otherwise they could not have known in September 2000 in Istanbul about his previous detentions in the south, or about any suspicion that he was connected with the PKK. He says that he fulfils some of the criteria which would show him to be a person at heightened risk of being detained by the authorities set out in the well known case of **Acdog**. These are that he has family members who have fallen under suspicion, he has been detained himself twice for protracted periods, he is a Kurd and he is an Alevi.
16. As against that it has been submitted that there is no real risk that he will be picked out on return to Istanbul, and if he is not picked out there, there is no real risk that he will be detained

thereafter within Turkey by the authorities unless, perhaps, he returns to his home area. We are concerned principally in this appeal with what risk he is going to run when he passes through the airport at Istanbul, because after he has done that he can mix in with the remainder of the population of Turkey, unless there is some particular reason to suppose that he will, because of his characteristics or past, be likely to be at real risk of being picked up by the authorities wherever he goes.

16. The detail of what happens on return to Istanbul airport has been the subject of a number of authorities before the Tribunal. Until the recent case of **O [2004] UKIAT 00038** the Tribunal had not had the opportunity of considering detailed information about what actually appears on the Turkish computer system that is said to be used at the airport and which is described as the GBTS. That information was only made available in about September 2003. It was not available to the Tribunal who considered **Acdog**.
17. In the case of **O** the Tribunal had before it a letter dated 3 September 2003 from the Department for Anti-Smuggling and Organised Crimes in Turkey which set out precisely what it was that was said was registered on the GBTS.
18. Because the matter is fully set out in **O** and was fully discussed in the argument before us it is not necessary to set out in detail what was contained within that letter. It was common ground that if what was on the GBTS was what was said in the letter of 3 September 2003 to be on the GBTS then the claimant would not be on it, because, put very shortly, unless someone has been through a procedure which requires some sort of judicial oversight the formalities that are required before a record is made on that computer will not have been complied with and he will not be there. There are exceptions to that broad statement but they are not material to the facts of this case.
19. That being so, the argument before us centred mainly on whether **O** was correct in saying that the GBTS contained what the Turkish officials said it did, and whether there was a real likelihood that some other means of checking up on persons returning to Turkey was deployed at the airport as well. If it was then the importance of knowing what is on the GBTS is of course substantially diminished.
20. We have been much assisted by some recent material that has been placed before us by the claimant. This material consists of three reports. They are dated 6 February 2004 from Mr Kanat, a Turkish lawyer; 16 March 2004 from Sheri Laizer; and a report of 19 March 2004 from David McDowall.

21. We deal first with the report of Mr Kanat. He is an experienced defence lawyer in Turkey who has defended what he described as political cases in the state security courts. He also has a practice in the non-criminal field. In our judgment his views must carry considerable weight. His report on the GBTS reads as follows:

“Information and details of those individuals who have been issued with arrest and search warrants by the approved legal departments are recorded on this system. These records are not erased from the system until the individual is captured, arrested detained. Should the individual be captured then the records from this system will be erased.

Arrest, Detention and Search Warrants are only issued by the judicial departments such as the Public Prosecutors Office or by the Judges Offices. In principle, the arresting parties such as the security forces must inform the judicial departments no later than 24 hours after the warrant has been executed. After notification, the matter will be passed on to the judiciary for procedure to follow. If a citizen is formally arrested but not charged, he too may have his details recorded on this system. For instance, this may be where a warrant has been issued but the individual has not been detained. (For example, a person detained on remand will have his details recorded on the GBT).

If an individual is taken into custody by the Anti-Terror Branch, or alternatively, the Security Forces, the individuals details will not be recorded on to the GBT system. If he has a record then this is erased as the individual has been detained.

However, in some cases we are aware, depending on the nature of the offence/crime, even if details are erased from the system the security forces will have separate records/files. In daily language this is known as “a tab record”. “Fis Kaydi” (Informal records kept by the Security Forces and Anti-Terror Branch). These records do not cause a problem for the individual as such, however should the individual be taken into custody for another offence, the security forces will refer to this record and prepare a file in respect of previous incidents to file with the judiciary.

There is no compulsory legal system whereby decisions of arrests, detentions and searches are provided to the municipal/registration offices.

However, in practice, this is not the case: the decision-making bodies are known to advise the Nufus registration departments, whereby notes are attached to the individuals’ files. If, thus, a person who is wanted applies for a copy of his Nufus registration, the registration office will immediately

contact the decision-making bodies. If an individual's GBT record is erased, then the record is also erased from the Nufus registration record.

The computer system at the airport does contain the GBT records – at times, not all of these GBT records are contained. But, it should be noted that the records contained in their computers are the records contained in the GBT."

22. It seem to us to be clear from this report that the computers that are at the airports are the GBTS computers and the information they contain is what is on the GBTS records. It is also plain that there are other less formal records that are maintained but that these will not be looked at unless somebody is placed into custody. There is no suggestion that people are being picked up at the airport because of these information files.
23. We turn now to the report of Sheri Laizer. We have considered in particular Part 3 which deals with political returnees to Turkey. We cannot see anything that suggests that the authorities use any system other than the GBTS as a filter when dealing with returned failed asylum seekers to Turkey. She makes the point that police checks into a persons records may reveal other aspects of their past than that held on the GBTS, and mentions that if detained a returnee could be removed from the airport to the anti-terror branch. This is no doubt correct, but begs the question of what it is that is likely to cause such removal. If someone does not feature on the GBTS, which is the means of checking that is used, according to Q and Mr. Kanat, it seems to us that, unless there is something else to alert the authorities, there no real likelihood that that will happen.
24. Finally, we have been referred to the report of Mr McDowall. He states frankly that he does not know what happens to returned asylum seekers at page 3 of his report.

"The consequence is that we are guessing including the governments cited as sources in the TCA, as to the true number who are mistreated either on re-entry or later."

25. He goes on to make a point, however, that in his opinion the GBTS cannot be the filter which supplied by the authorities because its mesh is not fine enough. One can see the sense of that statement, but it does seem to us that the evidence points to the fact that, whether adequate or not, the GBTS is what the authorities at Istanbul airport actually use. At page 6 of his report he deals with the GBTS system and says that the Kurdish Human Rights Project, who have analysed the GBTS say that in fact its ambit is wider than the letter of 3 September 2003 would have one believe. He sets out the

KHRP's statement on this matter at length and with one exception which is relevant to the matter before us it seems to us, with respect, that the KHRP have come to very much the same conclusion as to what is on the GBTS as did the Tribunal in O and Mr Kanat. That exception appears at the top of page 8 of the report of McDowall which reads:

"Where the person detained is alleged to have been politically active or is otherwise perceived as an opponent of the state, it is practice for their detentions to be recorded on the GBT".

26. We cannot see what support there is in any of the other material before us for that assertion. It is contradicted by what Mr Kanat has to say and is contradicted by the letter of 3 September 2003. Moreover, it has been stated on a number of occasions including by Mr McDowall, that the vast majority of detentions of political detainees go completely unrecorded by anybody.
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.
28. That deals with the case of a person who is returning to Turkey who does not stand out as somebody with whom the authorities would be likely to be interested. However, asylum seekers will frequently not be travelling on orthodox Turkish papers when they return and it has been suggested to us that in the case of such a person the Turkish authorities will detain them and will make checks from sources other than GBTS. We consider that that is a point that may well have considerable force but its ambit must be looked at carefully. We consider that the CIPU report is helpful as a starting point and we will turn first to the October 2003 report. We will quote the passages which appear to us to be relevant:

"6.101 The German immigration authorities reported in July 1999 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."

6.102A Senior Official at the Visa Dept, Ministry of Foreign Affairs, told the IND fact-Finding mission to Turkey in March 2001 that for the past five to ten years Turkey had not denied passports to undocumented would-be returnees, although it had denied them in the 1980s. He said that 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 the Turkish government, and would not be imprisoned on return. The airport police might question them about, for example, the loss and destruction of their passports, but this would be a low-level investigation. The subjects would quickly be released, almost certainly without charge, and allowed to go about their daily life without hindrance."

6.103 Turkey does not at present accept the removal to Turkey of Turks using EU letters (which are standard formal travel/identity documents adopted by the General Secretariat of the Council of the EU in its recommendation of 30 November 1994) and Turks who are without passports are therefore returned on one way emergency travel documents which issued by the Turkish Consul General in London.

6.104A returnee without a valid Turkish travel document is likely to be given an in-depth questioning by the Turkish border police, and this is to be distinguished from the routine identity check on arrival. The German authorities stated in July 1999 that, as a rule, the questions refer to personal data, date of and reasons for departing Turkey, possible criminal record in Germany and contacts with illegal Turkish organisations. In some cases further inquiries will be made via other offices (e.g. prosecutor's officer, registrar's office at the last Turkish residence of the returnee) in order to find out if the returnees 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.... Ill-treatment could not be ruled out in cases where returnees are suspected separatists.

6.105 Amnesty International in Germany stated in February 1999, 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."

29. We do not see how the claimant can bring himself in this case within paragraph 6.104 because he will be returning to Turkey if he returns at all at least on a one-way emergency travel document issued by the Turkish Consul General in London. He will therefore have a valid Turkish travel document and would not be likely to be given the in-depth questioning.
30. It may be submitted that paragraph 6.105 rather water this statement down because he would be carrying documents that indicated asylum proceedings abroad if on the one-way travel document. It seems to us that there is an answer to that and it is in the claimant's own hands. He may go to the Turkish embassy and may ask for a passport. Turkey gives passports to undocumented would be returnees. The claimant is undoubtedly Turkish and would be able to establish all relevant particulars to the satisfaction of the Turkish authorities here. If he were in possession of a passport we can see no reason why the authorities should look at him in any way askance when he returns to Turkey. A Turkish passport issued in the United Kingdom is no indication whatever that he has sought asylum here; there could be any number of reasons for it, including the expiry of his previous passport, or loss of his previous passport.
31. We do not find 6.105 easy to reconcile with 6.101 but if being a failed asylum seeker does not lead to different treatment then presumably suspicions are not enhanced by the fact that somebody is travelling on documents that indicate asylum proceedings abroad. The statement of Amnesty International is now quite an old statement, it dates from February 1999 and we consider that the information in paragraph 6.102 and 6.101 which reflects the conclusions of the Fact-Finding mission to Turkey more likely to represent the true state of affairs. Since the hearing we have received, without objection, further material which backs up this view. The report of the German immigration authority of July 1999 shows clearly, in our view, that para 6.104 is referring only to the situation of a returnee who has no travel documents that the authorities would consider valid. The relevant passage, from which 6.104 is taken, is headed:

“ Undocumented (i.e. travelling on an EU letter or similar)
“

The report clearly distinguishes such a person from a returnee travelling on a valid Turkish travel document who will pass into Turkey as set out in para. 6.101 and 6.102.

32. Further, the April 2004 CIPU report, in reliance on the Netherlands Ministry of Foreign Affairs report, states at para 6.241, that returnees on a valid travel document will be checked. As we have already found, this check will be on the

GBTS. If they are on it they will be detained and questioned. The claimant in this case is not at all likely to be on it. Thus, we have concluded that in this case the claimant would not be likely to be at any real risk of persecution because of anything that happens to him at Istanbul airport.

33. Having passed through the airport he would then become a part of the general population of Turkey. Of course, he has had troubles with the police in the past and it would appear, if he were detained, whatever is recorded against him would or might come to the attention of the authorities. It did when he was last arrested in September 2000, but it is noteworthy that the authorities seemed not to have expressed any particular adverse interest in him on that occasion and that he was released in a day with no charges and having not suffered any maltreatment.
34. Nearly 4 years have elapsed since then and we cannot see that whatever is recorded against his name in Turkey is likely any longer to lead to him being of real risk of persecution were he to be unfortunate enough to be arrested again. But we would make the further point that there is no reason to suppose that he is at real risk of being detained or arrested again. Unless there is something about him that alerts the authorities' attention to him he is as unlikely to be arrested or to be detained as any other Turkish citizen. Certainly, we consider that this would be the position outside his home area where he is not generally known as an individual with a past.
35. For all the above reasons we have come to the conclusion that this appeal must be dismissed and that the claimant would not be at real risk of persecution were he to be returned to Turkey.

Ainley

**His Honour Judge N
Vice President**