IN THE IMMIGRATION APPEAL TRIBUNAL

LT (Internal flight- Registration system) Turkey CG [2004] UKIAT 00175

Heard: 10.05.2004
Signed: 11.05.2004
Sent out: 25 May 2004

NATIONALITY, IMMIGRATION AND ASYLUM ACTS 1971-2002

Before:

John Freeman (a vice-president)
and
Richard Bremner JP

Between:

appellant

and:

Secretary of State for the Home Department,

respondent

Mr T Siddle (counsel instructed by Traymans) for the appellant
Mr M Davidson for the respondent

DECISION ON APPEAL

This is an appeal from a decision of an adjudicator (Ms SI Bayne), sitting at Hatton Cross on 13 May 2003, dismissing an asylum and human rights appeal by a Kurdish citizen of Turkey. Permission was given on the basis of the adjudicator's credibility findings on some of the claimant's history.

2. The hearing on 6 February 2004 was adjourned for reasons which need not now concern us: quite fortuitously in the interval there appeared the decision in **[2004] UKIAT 00038 O (Turkey)**, which cast a very different light on the position at the point of return, in cases such as this, from that apparently shed in **[2003] UKIAT 00034 ACDOG (Turkey)**. **38 O** was a decision of Lane VP and a lay member, followed in **[2004] UKIAT 00050 A (Turkey)** by Judge Ainley VP in a similar panel. Mr Siddle, for reasons which will become clear, asked us to disregard both **38 O** and **50 A** in favour of **ACDOG**, on the basis that that had been a decision of three vice-presidents, intended to be comprehensive.

3. Even if **ACDOG** had been decided under the present system of 'country guidance' cases, which it was not, it could not have been applied without regard to further important factual information, such as that which had appeared in **38 O** No judicial decision has the power of crystallizing the facts of the real world to an

extent where not reality, but what has been said about it is the guide. What 'country guidance' cases are intended to do is to lay down an approach to a settled factual situation, not to decree that that situation is to be treated as if it were the same for ever. For these reasons, we declined to regard ourselves as bound by the view of the facts set out in **ACDOG** - we are not of course bound by the view taken in **38 O** or **50 A** either - and we made it clear to Mr Siddle that we should consider the real situation at the point of return to Turkey on the basis of all the relevant decisions and other material put before us.

4. What had come to notice for the first time in **38 O** was detailed information about the contents of the Turkish central information system, which appeared in the CIPU report of October 2003 at § 5.37:

It is important to realise that there is a distinction in Turkey between "detain" (gozaltını almak) *and "arrest"* (tutuklamak). *There is a similar distinction in jurisdictions in other countries. In Turkey, law enforcement agents can* ***detain****, but a Court decision is needed to* ***arrest*** *somebody. In some cases law enforcement agencies can* ex officio *take somebody into custody but in these cases they are under an obligation to inform the Prosecutor within 24 hours.*

The further point noted in **38 O** was that the GBTS system, the only one known to be available to the authorities at the point of return (typically Istanbul airport) contains information on arrests, so defined; but not on mere detentions.

5. Mr Siddle asked us not to pay any attention to this information, on the basis that it had come from the Turkish authorities themselves, so must automatically be suspect. We disagree. While we should treat value judgements by the authorities of Turkey, or any other state whose methods come under criticism from time to time, with a considerable degree of healthy scepticism, the reliability of relatively neutral details of factual arrangements should in our view be treated in much the same way as any other factual information. In this case, the detailed references to Turkish legal terms, and (in **38 O**) to the contents of the GBTS, in our view would justify us, as it did the Tribunals in both **38 O** and **50 A,** in accepting what is said about them, subject to any challenges Mr Siddle may be able to make to the information itself.

6. Mr Siddle's main such challenge was on the basis that the Netherlands Government report which formed the basis for the view taken in **ACDOG** was still among the sources listed for the present CIPU report (and its October 2003 predecessor where some of the information in **38 O** first appeared). So, he said, it was illogical for the Home Office to pick and choose between different parts of it. How it can be said that anyone who regards part of a report as accurate and informative is necessarily bound to prefer other parts of it to information from another source which may shed a different light on those parts, is more than we can understand.

7. Mr Davidson however did take us to the origins of the view now put forward by the Home Office. The October CIPU report (§ 5.39) refers to *arrests* being on the GBTS: though it seems no-one realized the importance of this till **38 O**, it is confirmed by the details quoted from the June 2003 report of the Swiss Refugee Organization shown at § 5.48 of the April 2004 CIPU report. Not only that, but a little earlier at § 5.42 it appears the well-known Mr David McDowell was saying that "… a large proportion of detentions at police stations appear to go

unrecorded in a formal sense …". In our view the Tribunals in **38 O** and **50 A** were entirely justified in finding that only *arrests*, and not mere detentions would be recorded on the GBTS.

8. That is however not the end of the question of what information would be available on this or any other claimant to the Turkish authorities at the point of return, because the Swiss report already referred to goes on (see quotations at CIPU §§ 5.55-57) to say that there is evidence of individuals being denounced to the police as PKK sympathizers, but not appearing on the GBTS system; the various security forces each had their own information systems, as a result of which someone not on GBTS might be sought by the "anti-terrorist unit"; the absence of an entry about someone on GBTS should not be taken as evidence he was not at risk, as it must be assumed that someone taken into custody in the past might be listed on one of the other information systems.

9. Mr Davidson's answer to that is to be found in **38 O** at § 57 (and **50 A** at § 21): there is no reason for the authorities at Istanbul airport to assume that a returning failed asylum-seeker is of any adverse interest to the Turkish authorities; so no reason to look outside GBTS if nothing appeared on him there. On that, Mr Siddle referred us to § 6.104 of the October CIPU report, about "in-depth questioning" of those returning without valid Turkish travel documents; but this was dealt with in **38 O** at § 56: no Turkish citizen is now sent back to Turkey from this country without Turkish travel documents.

10. We now turn to the history given by this claimant: five short detentions between 1996 and 2000, all in his own part of south-eastern Turkey, and none involving a court order or followed by a charge; in other words, detentions and not arrests, within the Turkish meaning seen above. On the view we have taken of the general situation at the point of return, there would be no record about him on the GBTS, and no reason for the authorities there to look elsewhere; so there would be no real risk at that point.

11. Assuming (for present purposes only, and without deciding) that the adjudicator might have been wrong in taking the view that that history (which she accepted, apart from the last incident in 2000) would not expose the claimant to any risk, even from the local authorities in his own area, the question then arises as to whether he would be able to go on from the airport to some other part of Turkey, without either facing real risk there, or its being 'unduly harsh' to expect him to do so.

12. Mr Siddle did cite two decisions (without being able to produce copies: they are referred to in *Macdonald*) to the effect that, where there is a real risk of persecution by State authorities, no internal flight alternative is available. They are **Orechkov (18330)** and **Kumaran [00/TH/01459]**. So far as these decisions may suggest that this is a rule of law, or even a general presumption of fact, we have not the slightest hesitation in taking the view that they ought not to be followed. Whether an internal flight alternative is available must be a question of fact, to be decided on the facts of any individual case. Sometimes persecution by State authorities may indicate serious interest and alertness by their agents in all parts of the state in question; at other times not. In this case there is nothing to show that the claimant had ever been an object of adverse interest, and that of a fairly passing kind, to anyone outside the police in his own area.

13. Mr Siddle's case on the facts relating to internal flight in this case is that the claimant could not lead any sort of normal life elsewhere without registering with the local *muhtar* (administrative headman), which would once again expose him to whatever records might exist being taken up. Mr Siddle did not refer us to any evidence on the registration system; but it is fairly well-known: equally well-known are the many thousands of people living outside that system in the vast shanty-towns (*gecekondu*) around Istanbul and other large cities. Mr Siddle suggested that returning someone to that sort of existence would not only be 'unduly harsh', but "inhuman or degrading treatment" contrary to article 3 of the Human Rights Convention.

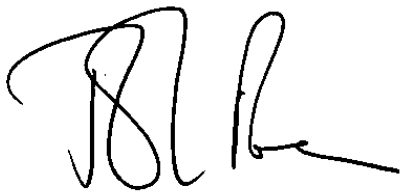
14. On this point, Mr Davidson referred us, first to § 5.23 of the CIPU report:

In theory, anyone taking up residence in or leaving a particular neighbourhood or village is supposed to report this to the local muhtar. In practice, that is often not done, with the muhtar not being approached until a need arises for a certificate of residence somewhere.

As to when such a need might arise, he went on to § 6.205, which deals with employment, without any mention of such a certificate being required to get it.

15. While that last point is certainly not conclusive as to the legal position in Turkey, the passage cited from § 5.23 suggests to us that the day-to-day life of the mass of the population can perfectly well be carried on without such a certificate. It follows in our view that it would be neither 'unduly harsh' nor "inhuman or degrading treatment" to expect a returned asylum-seeker to seek refuge in some other part of Turkey than his own, without necessarily registering with the local *muhtar*. The result is that, even if (which as already made clear we are not deciding) the adjudicator were wrong about the adverse interest now likely to be taken in this claimant in his home area, she was right in the result she reached.

Appeal dismissed



John Freeman