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ST (Cessation - Medical Treatment) Turkey [2004] UKIAT

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 17 February 2004

Date Determination notified:

23 March 2004

Before:

Dr H H Storey (Chairman)
Mrs E Morton

Secretary of State for the Home Department

APPELLANT

and

RESPONDENT

Representation

For the appellant : Mr J. McGirr, Home Office Presenting Officer

For the respondent : Mr G. Vencatachellum, Counsel, instructed by French & Co.

DETERMINATION AND REASONS

1. The appellant is the Secretary of State. He appeals against the decision of an Adjudicator, Mrs C.M. Graham, allowing the appeal of the respondent, a national of Turkey, against the decision giving directions for removal following refusal to grant asylum. To avoid confusion the respondent is hereafter referred to as the claimant.
2. The Adjudicator found the claimant entirely credible. She accepted he had been a low level supporter of the PKK since aged fourteen who had been arrested and detained on four occasions between July 1998 and July 1999. She also accepted that whilst in detention he had been subject to an "appalling history of physical and sexual abuse" and that, as a result, he was in psychological terms a seriously debilitated and vulnerable man.

3. She refused the asylum appeal, however, because she considered there had been a dramatic change in the situation in Turkey since the claimant left in August 1999. She concluded that as the claimant was not an active member of the PKK and had never claimed to be more than a low level supporter, he would not be at risk on return.
4. Albeit allowing the Article 3 grounds of appeal, the Adjudicator did not do so because of any concern about ill-treatment from the authorities on return. Her conclusions on this aspect of the case were entirely consistent with those she reached on the asylum claim: She allowed it solely out of concern for the claimant's genuinely serious psychological problems. She added:

“The road to rehabilitation for the appellant will be a long and at times a distressing one, and one throughout which he will need the continual support of those in whom he has placed his trust.”
5. That disposes of the first ground of appeal which was to the effect that the Adjudicator had failed to show, following Kacaj 01/TH/0634* why her Article 3 conclusions differed from those she reached in respect of the asylum claim. Ill health is one of the exceptions to the Kacaj principle of common criteria.
6. The second ground of appeal, however, was more pertinent. It was submitted that the Adjudicator had paid insufficient attention to the finding of the European Court of Human Rights in the case of Bensaid v UK [2001] INLR 325 that future prognoses of mental conditions are essentially speculative and that the priority of treatment available in the Contracting State is not of itself determinative of an Article 3 claim. It was contended that there is treatment available for the claimant in Turkey and so the Adjudicator erred in finding that return would involve a real risk of cruel, inhuman or degrading treatment.
7. There is one aspect of this submission that we can discard immediately. The case of Bensaid does not contain a holding that future prognoses of mental conditions are inherently speculative. The Court did find the specific medical evidence in that case speculative, but it did not attempt to generalise. Plainly medical evidence is capable of affording material evidence going to the issue of future risk, albeit it will rarely if ever be determinative of that issue, since medical experts are not country experts: see P (Yugoslavia) [2003] UKIAT 00017. We shall return to the question of what significance the medical evidence in this case had below.

8. However, the grounds do properly identify a serious error in the Adjudicator's assessment of risks arising from the claimant's medical condition. The Adjudicator nowhere took into account the extent to which medical treatment would be available to the claimant in Turkey. It is clear from the case of Bensaid that if upon return a claimant is reasonably likely to be able to access relevant medical services, even if they are not in the immediate locality, a claimant cannot show that return would expose him to a real risk of serious harm. That also accords with commonsense.
9. In this case the Adjudicator had before her the CIPU Report which included a description of medical services in Turkey.
10. We recognise that even where there is appropriate medical treatment available in the country of destination, there may be unusual cases where the mere act of disruption or cessation of ongoing medical treatment in the receiving country can give rise to a real risk of serious harm. To take an extreme case, removal of a person who is on a life-support machine in the UK and for whom long-haul air travel would be too dangerous an option, may conceivably be able to show that removal would be contrary to his human rights, although we would add that we understand there to be Home Office policies in place which would ensure such a removal was not effected.
11. Given that we have found there is appropriate available medical treatment for this claimant in Turkey, the question then is, was his an unusual case where the mere act of cessation of medical treatment in the UK would place him at Article 3 risk?
12. There has been some criticism made by Mr McGirr in this case of the efficacy of the medical evidence. He argued that Helen Bamber, OBE, OU (Essex), founder and former Director the Medical Foundation for the Victims of Torture, was not qualified to make a psychiatric assessment. In our view this was a quite extraordinary argument. It may be that Helen Bamber is not a qualified psychiatrist, but her experience and expertise in assessment of the physical and mental problems experienced by victims of torture is virtually unparalleled. It is also noteworthy that in this case her assessment was based not on a one-off interview but on a number of interviews with the claimant stretching over a period of some eighteen months, between December 2001 and June 2003. Furthermore, she took steps to complement her own initial report with one from Dr John Rundle, the Medical Foundation's neurologist.

13. The question remains, however, whether the medical assessments made by the Medical Foundation demonstrate that the mere act of disruption of the claimant's ongoing medical treatment would cross the Article 3 threshold, a threshold defined in N [2003] EWCA 1369 as having to be extreme and exceptional.
14. The claimant's condition as assessed by Helen Bamber in the latest Medical Foundation report was as follows. He was still suffering symptoms consistent with Post Traumatic Stress Disorder. She made reference to an episode of self-harm and under the heading "Suicidal ideation", she wrote: "On each occasion I have seen Mr Terbas he has expressed suicidal thoughts". Although his confused and anxious state on the last occasion meant that Ms Bamber could not make a comprehensive up-to-date assessment, she concluded that as a result of his severe episodes of torture and sexual abuse in Turkey he remained a "seriously disturbed and vulnerable man, still preoccupied with aspect of his torture, particularly sexual torture ...". As well as suffering from PTSD, he was depressed, expressed suicidal thoughts and was a 'seriously traumatised and vulnerable man who requires medical investigation and long-term psychological treatment'. She noted that as Mr Terbas had now moved to London, she would be arranging for him to attend counselling sessions. She ended: "Faced with the possibility of return to Turkey, I would be most concerned for his well-being."
15. As troubling as the Medical Foundation's assessment is, we do not consider that it demonstrates that disruption of his treatment would in itself cause the claimant serious harm. Ms Bamber does not specify to what extent her concerns about his return to Turkey related to her opinion about medical facilities there, but in any event she is not, and does not purport to be, an expert on Turkish medical facilities and standards. And in any event, we have already explained by reference to objective country evidence that there would be appropriate available treatment in Turkey for this claimant.
16. The Adjudicator placed emphasis on the claimant's need for "the continued support of those in whom he has placed his trust". It is apparent that the claimant has built up trust in Ms Bamber and other medical experts he has sought help from in the UK. It is unfortunate -and remiss of the claimant's representatives - that we do not have up-to-date evidence about the counselling sessions Ms Bamber said in June 2003 were to be arranged for the claimant. But, even assuming these have in fact gone ahead and continue, there is nothing to indicate that it is crucial to the claimant's physical and

moral integrity that his treatment be continued with the same individuals. We are confident that the Medical Foundation, who is one of the organisations which has participated in the Istanbul Protocol and has a wide range of international contacts, could assist in signposting the claimant to appropriate medical experts in Turkey in a position to provide some continuity in the nature and type of treatment currently received by this claimant.

17. Accordingly we find that the Adjudicator was not entitled to consider that the claimant could not resume appropriate medical treatment, in a climate of trust, in Turkey. Accordingly there was no proper basis for considering there was a serious risk to the claimant's physical and moral integrity.
18. For the above reasons the appeal of the Secretary of State is allowed.

**H.H. STOREY
CHAIRMAN**