**IN THE IMMIGRATION APPEAL TRIBUNAL**

**Reported decision no – AT (No Power to Review Leave) Turkey [2003] UKIAT 00127**

Heard: 07.05.03
Signed: 25.07.13
Sent out: 04/11/03

**IMMIGRATION AND ASYLUM ACT 1999**

Before:

**John Freeman** (chairman)
**Mr R Hamilton** and
**Dr AU Chaudhry**

Between:

**Secretary of State for the Home Department,**
appellant

and:

(claimant)

**DECISION ON APPEAL**

Miss C Hanrahan for the Secretary of State
Miss C Ganning (Halliday Reeves, solicitors, Gateshead) for the claimant

This is an appeal from a decision of an adjudicator (Mr T Jones, and not the adjudicator suggested by the careless person – neither Miss Hanrahan nor the presenting officer before the adjudicator – who drew up the grounds of appeal), sitting at Durham on 18 July 2002, allowing an asylum and human rights appeal by a Kurdish citizen of Turkey. Leave was given on the basis of what were said to be muddled and contradictory findings in the decision.

**2.** Halfway through the hearing before us, Miss Ganning raised the question of whether leave should ever have been given at all, on the basis that the decision had been improperly re-issued, so that it was far out of time from the original date. In our view:

a) we have no power to review a grant of leave, once made (see **Kumar [2002] UKIAT 06451**): the challenge must at present be made on judicial review (or under the new statutory review procedure, when that comes into force); and even if we did

b) it is far too late to make such a challenge when the hearing is halfway through: best practice would be to make it as soon as the grant of leave is notified (27

March in this case); but allowing the hearing to proceed on the merits of the case is a clear waiver of any such point as this.

**3.** The adjudicator summarizes the claimant's case reasonably clearly, though we rather wish he would do something to supplement his typist's apparent complete ignorance of punctuation. The trouble comes with his findings, which come at §§ 14-18, and are reproduced below. On a minor point, we should mention that the excessive length of § 14 (a whole page) removes much of the point of numbered paragraphs. Occasionally that may be unavoidable; but there is no apparent reason for it here: again that is something for the adjudicator to think about when proof-reading, if not before.

**4.** This is what the adjudicator found:

*14. The Respondent's case is set out in the Reasons for Refusal Letter and the noted closing remarks of the Presenting Officer in the Record of Proceedings. I shall not repeat them at length here for the sake of brevity and obviously would record that the documents are there to be read in themselves and the Record of Proceedings. In summary the Respondent's case is that the Appellant has given conflicting accounts in what is becoming an increasingly embroidered and evolving claim. Little information was given on the asylum interview record arrival on 22nd April as regards his political background. Three of the questions on pages C4, 7 and 9 offered the Appellant the opportunity to comment but he does not do so. The Respondent takes issue also with the Appellant's use of Dev Sol which has not existed now for some years but has continued under other identity. The Appellant who the Respondent contends has been clear and fluid in giving his evidence today. I have to say I have made similar note for myself in the Record of Proceedings at the conclusion of the Appellant's evidence has given varying accounts of even the core of his story, the bus destruction and detention. The Respondent points out that in relation to why he had to report the burning of the bus to the military rather than the police the Respondent points out: (a) At 02 of the bundle he does not know why. This was noted in representations made by his first solicitors of 17th May 2000. (b) In his current statement given to his present solicitors the Respondent points out that the Appellant says he needed to complain to the military as it was they who he suspected of having burnt the bus. (c) In his evidence today the Appellant gives an account that he was told by the police station staff that the area in which the bus was burnt out was not within the police station's area it was within the military's and as the military being responsible for that area he should report it to them. Further it has to be said that there is an account given by the Appellant at (02) that he was beaten up at the police station before being sent on to the military that allegation is not repeated in his later detailed statement. The Respondent contends that the account given on arrival where pro forma questions have been followed and have enquired the Appellant's health and condition and ability to respond is a true and accurate account of the Appellant's case. Whilst there is medical evidence in respect of the Appellant the Respondent contends is this sufficient in condition to result in such a degree of seeming loss of memory, confusion etc. The Appellant in his evidence went on further the Respondent points out to excuse these lapses or explain the pressure at the asylum interview to saying that an agent had given him a pill to take before getting on the plane and leaving for Heathrow to calm him which had then drugged him. The Respondent quite rightly points out that that is the first that anyone seemingly in the proceedings has heard of that. The Respondent*

*whilst not expecting the Appellant to have fled with any documents that may have supported his cause has had two years to bring forward other evidence that might support him. As such the Respondent summates the matter as to the core of the case being established in relation to the bus incident and subsequent persecution then it is really a matter for the Adjudicator looking at that the Respondent's view being that he will have little to go on other than this man's word. The Respondent representative concludes by pointing out that the Appellant was able to leave an international airport in Turkey using his own documentation on a commercial flight notwithstanding his fears of being wanted or of the computer efficiency of the authorities. That he had been able to live for some time in Istanbul before leaving without being traced and points to objective material suggesting that if he were returned now as a failed asylum seeker even after this passage of time he would not be at risk whereby his protected rights would be breached.*

*15. Essentially the advocates are putting before me that in this case credibility is the key issue. Thereafter deemed credible or otherwise the question of risk on return then also comes into play. In looking at credibility my attention has been drawn rightly to the UNHCR Guidelines and the case of Chiver (10758). I note from those guidelines that consideration must be given to the condition of those arriving in this country on arrival taking into account the nature of their journey, past experiences and treatment by the authorities in their home country and facing the authorities in this for the first time. I also note that it is perfectly possible for an Adjudicator to consider that an Appellant is not telling the truth about certain matters is mistaken about others and has even embellished his case yet the core of that case can remain standing. I am grateful to the parties for bringing to my attention objective material that is referred to their submissions and the Record of Proceedings. It is clear that there are still well-founded concerns as to the human rights record in Turkey. In respect of the medical evidence I have to note that I am not medically qualified and that as yet and as present no diagnosis of cerebral involvement of Behcet's syndrome is known in connection with the Appellant. Clearly in the absence of such diagnosis of clinicians I am not in a position to give any differing opinion but can only deal with it on the basis that it is indeed a factor which has to be keyed in at this stage given the low burden and standard of proof herein. There is clearly a diagnosis of Behcet's itself.*

*16. The Appellant has on observation before me given evidence fluidly and clearly. I note that I must take extreme care in looking at this bearing in mind the use of an interpreter and my own want of experience of having day to day conversations with persons from this country. The Respondent has quite rightly pointed out to a number of differences in the Appellant's account but has not gone on to challenge the Appellant's assertions that subsequent to his departure documents had been found that incriminated him, the authorities continue to look for him and harass his parents. The core of the Appellant's case was supported in some measure by accounts of treatment undergone by others as noted in the objective evidence.*

*17. I note from the UNHCR Guidelines giving consideration to the initial interview which I accept is a pro forma interview rather than a free flowing asylum interview record but it may have been possible that it had the appearance of being curtailed but I do not consider it to have been unfair. The Appellant has then sought to give some further detail and has referred through his solicitors in*

*their letter of 17th May 2000 that he was told that he could give further information and this he sought to do. He has given further and fuller information subsequently in a fully prepared statement. In all of these statements the core of his case the incident relating to the bus, the subsequent treatment has remained largely the same with the exception of detail as to perhaps why he would have gone to the military who had ill-treated him earlier and the omission as regards a beating at the police station preceding his referral to the military to make his complaint. In essence I do not consider these to be such that the Appellant's credibility in relation to this incident, his family history of involvement with the political parties and ongoing interest in him to be such that I could make an adverse credibility finding. I am further satisfied that given the interest in him notwithstanding his ability to leave by air earlier that he would not be of interest if he were returned. Looking at the objective material and looking at the matters in the round it is clear that the Appellant would be at sufficient risk to consider that his rights under Article 3 would be prejudiced. I am not satisfied under Article 2 that there is a sufficient or near certainty of death on the objective information or the information from the Appellant.*

*18. Having reached these conclusions I do find that it would be a breach of the United Kingdom's obligations under the 1951 Convention; because its actual or imputed opinion, and under Article 3 of the 1950 Convention were he and his family to be returned to his home country at this time.*

**4.** Miss Ganning conceded at once what we may perhaps most politely call the infelicities and obscurities of those paragraphs; but she said that, read as a whole, they showed the adjudicator had reached a decision for reasons he was entitled to rely on. Some of the difficulties can be cured by supplying punctuation, and we need not spend time on those. One, taken up in the grounds of appeal at § 2.4, relates to this passage:

*I am further satisfied that given the interest in him notwithstanding his ability to leave by air earlier that he would not be of interest if he were returned.*

Clearly the adjudicator meant "… *would* be of interest if he were returned". We do hope he will start proof-reading his decisions, because that is not the sort of correction we ought to have to make for him.

**5.** Turning to the more substantial points in the case, there is a complete failure by the adjudicator to refer to any details of the background evidence before him. This, as it seems we have to make clear, is as unacceptable when allowing an appeal as when dismissing it. The adjudicator did say this:

*8. I have also taken into account bundles of documents placed before me containing material evidence and objective material by both representatives. I have been referred to and guided to certain passages and I have read those passages with special care, I read them in the context of the entire document. I have read the whole of the documentation set before me in order to help me come to my conclusions.*

We have to say that this kind of apparently standard paragraph is quite valueless. It does nothing at all to let either the parties or the Tribunal know what the adjudicator actually thinks about the background material, which is the point of putting anything in a judicial decision.

**6.** The following passages at §§ 15 - 17 take this no further:

*I am grateful to the parties for bringing to my attention objective material that is referred to their submissions and the Record of Proceedings. It is clear that there are still well-founded concerns as to the human rights record in Turkey.*

*The core of the Appellant's case was supported in some measure by accounts of treatment undergone by others as noted in the objective evidence.*

*Looking at the objective material and looking at the matters in the round it is clear that the Appellant would be at sufficient risk to consider that his rights under Article 3 would be prejudiced. I am not satisfied under Article 2 that there is a sufficient or near certainty of death on the objective information or the information from the Appellant.*

**7.** None of those passages tell us anything about the sources or contents of the "objective material" relied on by the adjudicator. He was prepared to accept the claimant's history, self-contradictory though it was: perhaps his decision might have stood up, if he had gone on to analyse on the basis of any detailed current background evidence why that should have put him at risk on return to Turkey now. Miss Ganning suggested that the decision could nevertheless be supported on the basis of what the adjudicator found had happened to the claimant's parents. The adjudicator's findings on that amount to this:

*The Respondent has quite rightly pointed out to a number of differences in the Appellant's account but has not gone on to challenge the Appellant's assertions that subsequent to his departure documents had been found that incriminated him, the authorities continue to look for him and harass his parents.*

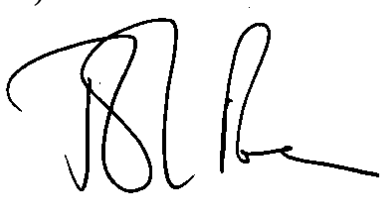
**8.** We do not regard noting that evidence has not been challenged as an adequate reason for accepting it. Asylum and human rights appeals are not ordinary civil cases. There is a strong public interest involved, and it is for the adjudicator to make up his own mind independently, and for adequate reasons, on every material point. The adjudicator did under § 13 give the details of what was claimed on this one:

*(vii) He claims that this harassment continues. He is aware from his parents that soldiers continue to look for him. He is aware that his home has been searched and he says illegal magazines proving his association with Dev Sol (which the Appellant accepts was disbanded in 1994 but continues to use 'the old name'). The authorities being aware of this together with his claimed background and the fact that other relatives have been granted asylum status in Germany he believes with the computer records kept by the State there is no safe place for him to live anywhere in Turkey.*

**9.** Even assuming that the adjudicator was entitled to accept that evidence, it clearly required some analysis of the background material before entitling him to go on to conclude that it would lead to any real risk on return of either Convention persecution or ill-treatment for this claimant. Miss Ganning invited us, if a further hearing had to be directed, as she clearly foresaw it might be, to invite Mr Jones to put right what had gone wrong. Since he heard this case nearly ten months ago,

we see no useful purpose in that. There is in our view no alternative to a new hearing before a fresh adjudicator, for which purpose the file will be sent to the regional adjudicator at North Shields.

**Appeal allowed**
**Direction for new hearing** ("remitted", not to Mr Jones)



**John Freeman** (chairman)