

LSH  
Heard at Field House

\_S (Prison Conditions -  
Article 3) Yemen [2003]  
UKIAT 00021

On 21 May 2003

## **IMMIGRATION APPEAL TRIBUNAL**

notified:

Date Determination

.....07.07.2003....

**Before**

:

**Mr Richard Chalkley (Chairman)**  
**Mr L V Waumsley**  
**Mrs R Faux, JP**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**APPELLANT**

**and**

**RESPONDENT**

*Mr J Jones, a Senior Home Office Presenting Officer appeared on behalf of the appellant and Dr S A Kaballo, representative from West Midlands Anti Deportation, appeared on behalf of the respondent*

### **DETERMINATION AND REASONS**

1. The appellant is the Secretary of State for the Home Department. The respondent is a citizen of Yemen. The appellant appeals against the decision of an Adjudicator, Mr D Borsada, sitting at Birmingham, who in a determination promulgated on 13 January 2003, allowed an appeal by the respondent against the decision of the appellant on 12 July 2002, to direct his removal after refusing asylum.
2. The Adjudicator dismissed the respondent's asylum claim but allowed the appeal on the basis of his human rights claim

under Articles 3, 5 and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. The basis of the respondent's claim is that he fears persecution from the members of a family who all wished to kill him. They wished to kill him because his brother killed one of their family members. In Yemen, if family members are killed, then the other family members will seek revenge by killing people from the killer's family.
4. Mr Jones submitted that the Adjudicator had allowed the respondent's appeal under Article 3 for reasons he has given in paragraph 27 of his determination. In doing so the Adjudicator relied on the US State Department Report, but he failed to properly evaluate all the evidence. There was no evidence before this Adjudicator that the respondent had any political opinions. There is no evidence that on return he will face any interrogation, because he has already been convicted and sentenced. According to the US State Department Report, there have been numerous allegations and there is credible evidence, that in past years, the authorities have tortured and abused suspects and detainees, in cases in resulting death, in order to attempt to coerce confessions before or during trial. This respondent has already been sentenced and will not, suggested Mr Jones, therefore, risk interrogation. It was necessary, he suggested, to look at the general conditions in the country. The US State Department Report describes the prison conditions as being "poor" but that, would simply not do. The evidence before the Adjudicator was, to be frank, insufficient to show that there would be a breach of Article 3. The Adjudicator's findings at paragraph 27 of the determination are simply not supported by the evidence.
5. Mr Jones suggested that if, following the Court of Appeal decision in **Ullah and Do [2002] EWCA Civ 1856**, the respondent's claim under Article 3 fails, then the claims under Article 5 and 6 must also fall. He invited the Tribunal to allow the appeal.
6. Dr Kaballo conceded that if a breach of Article 3 was not established, then the respondent's claims under Articles 5 and 6 would fall. He asked us to note that the respondent was sentenced to term of imprisonment in absentia. The Adjudicator's consideration of the US State Department Report was correct. He drew our attention to the last paragraph of page 4 of the US State Department Report, which referred to prison conditions being poor and not meeting internationally recognised standards. He also pointed out that unauthorised private prisons are in use. The Adjudicator found the respondent to be credible in paragraph 19 of the determination. If the respondent's account is consistent, then he is certainly not an ordinary person who will serve his

sentence in a prison. He will have to serve it “under the history of tribal conflict”.

7. Dr Kabbalo conceded that there was no evidence that the respondent would face a real risk of interrogation on his return to Yemen.
8. As to the general conditions, the government’s human rights record is poor and, suggested Dr Kabbalo torture is practiced despite government directions to the contrary. The government has not ended human rights abuses.
9. We reserved our determination.
10. We noted from the US State Department Report that the judiciary normally independent in Yemen but can be severely hampered by corruption, executive branch influence and the frequent failure of the authorities to observe judgments. Whilst the government was said generally to respect its citizen’s human rights in some areas and continue to improve its human rights performance, however, its record is poor in several other areas and serious problems remain. A directive intended to align the country’s arrest interrogation and detention procedures more closely than international accepted standards generally were implemented during the year but, prison conditions were said to be poor and some detainees were held in private prisons not authorised by the government. The constitution was described as being ambiguous regarding the prohibition core of inhuman treatment and members of the security forces to which otherwise abuse persons in detention. The arresting authorities were known to use force during interrogations, especially against those arrested for violent crimes. The government were said not to have taken effective steps to end the use of torture or to punish those who commit such abuses.
11. Whilst serious problems were said to remain, the International Committee of the Red Cross have acknowledged the government’s commitment to Penal reform and noted that the government have made significant improvements since the 1995 International Red Cross Committee inspection, especially with regard to the incarceration of persons with mental disabilities.
12. We acknowledge that the prison conditions in Yemen are harsh. We do not accept, however, that on the basis of the objective evidence before us, it can be said that there is a real risk that the respondent will face inhumane or degrading treatment or punishment. There is no suggestion that this appellant will face the prospect of having to serve his imprisonment in a private prison and it was conceded on his behalf there is no credible evidence that he will face

interrogation on his return, since he has already been convicted. We accept that prison conditions in Yemen may not be as good as one's expected in this country. As the European Court has recognised, it is not for countries who are signatories of the European Convention to impose the standards of the Convention on the world. The threshold has to be a high one. There is a level below which treatment cannot fall; where it does fall below the standard one would expect in a civilised society, such treatment can amount to inhumane and degrading treatment. However, our analysis of the objective material before us, leads us to believe that there would be no breach of Article 3 if the respondent is returned to Yemen.

13. For all these reasons we allow the Secretary of State's appeal.

**Richard Chalkley**  
**Vice President**