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Heard at Field House

KY (HADEP-PK) Turkey CG  
[2003] UKIAT 00018

On 8 January 2003  
Dictated 9 January 2003

**IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

..2<sup>ND</sup> July 2003....

**Before:**

**Mr H J E Latter (Chairman)  
Mrs S Hussain, JP  
Mr A F Sheward**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**APPELLANT**

**and**

**RESPONDENT**

Appearances

For the appellant: Mr Ouseley, Home Office Presenting Officer  
For the respondent: Mr R Rees of Counsel  
Instructed by Jasvir Jutla & Co, Solicitors

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State against the determination of an Adjudicator, Miss L Astle, who allowed the respondent's appeal on both asylum and human rights grounds against the decision made on 14 January 2002 giving directions for his removal. In this determination the Tribunal will refer to the respondent as the claimant.
2. The claimant is a citizen of Turkey born in January 1964. On his own account he left Turkey on 1 November 2000. His journey was arranged by an agent. He travelled in the back of a lorry across Europe and made a clandestine entry on about 11 November 2000. He claimed asylum on 12 November 2000. His claim was based on a fear of persecution due to his support for HADEP and the PKK in Turkey. The claim was rejected for the reasons set out by the Secretary of State in the reasons for refusal letter dated 8 November

2001. The Adjudicator heard the appeal against this decision on 17 September 2002.

3. The claimant is an ethnic Kurd, born in Bosni in the Province of Adiyaman in South East Turkey. In the mid-1980s PKK guerrillas came to the family home to obtain food and shelter. He distributed leaflets and helped organise meetings for the villagers to discuss Kurdish issues. He did not become a member of the organisation. He completed his military service between March 1984 and September 1985. He says that he was often physically abused by his fellow officers as a result of his Kurdish ethnic origin. After completing his service he returned to his village. In 1986 his village was raided and the appellant with others was taken to the gendarme station in Bosni and interrogated. He was released due to lack of evidence. In 1993 he was detained at a police station for two days following an identity check. He became involved with HADEP after it was founded in 1994 but did not become a member. He would distribute leaflets, attend meetings and demonstrations.
4. In May 1998 he attended May Day celebrations in Antalya with HADEP. They were shouting Kurdish slogans. The authorities moved in on them and the claimant was arrested and detained for five days. He was released for lack of evidence. On 1 September 2000 he was attending a meeting at the HADEP building in Mersin. He was stopped and taken to the security headquarters where he was beaten with truncheons, subjected to falaka and generally beaten. He denied involvement with the PKK and was released after a week. He was threatened that if he were detained again in relation to his activities with either HADEP or PKK he would face a more severe punishment. He decided that it was no longer safe for him to remain in Turkey and he travelled to Istanbul where he remained for about 10 to 15 days before the agent was able to arrange for his departure.
5. The Adjudicator noted that there were some inconsistencies in the claimant's evidence but broadly speaking she found these to be a matter of emphasis not going to the core of the account. She considered that there was a reasonable degree of likelihood that his evidence was true. She accepted that he had suffered harassment generally and had been detained and ill treated. She found that his claim that the police wanted him to be an informer to be less easy to believe. Given the nature of his activities for the PKK and HADEP it seemed doubtful that he would be of much use to the police. The claimant had given evidence about his cousin being killed as he refused to be an informant but the Adjudicator said that she did not feel able to take this matter into account as she had insufficient detail to enable her to form any conclusion.
6. The Adjudicator said that whilst the claimant had been detained on four occasions between 1986 and 2000 he had always been released without charge. He had managed to conduct his business travelling

freely throughout Turkey albeit with some harassment over identity checks. He had been able to travel to Istanbul prior to leaving and remained there for two to three weeks. She found it doubtful that in the ordinary course of events he would be of interest to the authorities. She went on to say that the background material on the procedures adopted for returnees gave her cause for concern. The claimant's history would be known to the officials concerned and she considered it likely that he would be detained and questioned. There was sufficient information in the reports before her to indicate that in those circumstances he would face a real risk of further ill treatment and persecution. On this basis she allowed the appeal.

7. The grounds of appeal are admirably succinct. Ground 1 argues that there is a contradiction between the finding that it was doubtful that in the ordinary course of events the claimant would be of interest to the authorities with the finding that he was likely to be at risk of detention, ill treatment and persecution on return. The second ground argues that the Adjudicator had not taken account of the guidance given in Polat [2002] UKIAT 04332 which dealt in some detail with the risk on return to a low level sympathiser with the PKK/HADEP.
8. Mr Ouseley argued that if the claimant was of no interest to the authorities, he would not be at real risk on return. He had been able to live in Istanbul. He had never been charged or placed under any conditions. There was a generally improving situation in Turkey since the PKK had ended the armed conflict. No provinces were now under a state of emergency.
9. Mr Rees submitted that the Adjudicator's decision was properly reasoned and that she had been entitled to reach her conclusions. They had been assessed in the light of the background evidence summarised at paragraphs 28-34 of the determination. The Adjudicator's findings were not inconsistent. The Adjudicator was entitled to look at the risk on return. Mr Rees referred the Tribunal to paragraph 6.90, 91, 94 and 125 of the CIPU Country Assessment November 2002. He went through the factors identified by the Tribunal in paragraph 29 of Polat. The evidence in the CIPU report on the treatment of returned asylum seekers had to be assessed in the light of the fact that there had been no formal monitoring of returns. The reported cases of mistreatment depended on reports being made and there would inevitably be incidents which went unreported.
10. The Adjudicator allowed the appeal because of her concern arising from the evidence on the procedures adopted relating to returnees. The Adjudicator has referred to the evidence in the CIPU report in paragraphs 32 and 33 of her determination. The issue is dealt with in paragraphs 6.87-106 of the CIPU report. Mr Rees points out that the records held by the authorities can also relate to official judicial preliminary enquiries or investigations by the police or gendarmes: paragraph 6.89. The relevance of this point is that the criminal records

of asylum seekers who are returned to Turkey are checked on entry like those of any other Turkish national. Criminal records may include a record of preliminary enquiries or police investigations. Questioning is designed to establish or check personal particulars, reasons for and times of departure from Turkey, grounds for seeking asylum, reasons why the application was rejected, any criminal records at home and abroad including drug related offences and possible contacts with illegal organisations abroad: paragraph 6.90. Anyone suspected of committing criminal offences is transferred to the relevant investigative authority and persons suspected of membership of the PKK, left wing radical organisations such as DHKP/C or TKP/ML, militant Islamic groups or anyone suspected of giving support or shelter to one of those organisations is handed over to the anti-terror branch where torture or ill treatment of suspects cannot be ruled out. However, according to paragraph 6.90 where there is no definite suspicion, as a rule, the person is released after an average 6 to 9 hours detention.

11. Paragraph 6.92-6 and 102 deal with the allegations of maltreatment or torture after arrival in Turkey. The general tenor of the evidence is that most asylum seekers or returnees are released after the routine interview although in an Amnesty International report in February 1999 there was evidence of an increasing number of cases where returned asylum seekers were later picked up by unknown men and beaten up or arrested and taken into custody. In July 1999 the German authorities reported that in general rejected asylum seekers did not risk persecution. The fact that a returnee was a failed asylum seeker did not lead to different treatment on return. The Turkish authorities were well aware that many Turkish nationals applied for asylum only for the purpose of gaining authorisation to remain in Germany. An IND Fact Finding Mission in March 2001 was told that the Turkish Government recognised that the overwhelming majority of Turkish nationals who had applied for asylum overseas had done so purely for economic reasons and were of no interest to the Turkish authorities.
12. According to paragraph 6.102 there have been 70 reported cases advanced as evidence of the mistreatment of returnees in Turkey. These cases date from 1989. Four cases relate to returns from the United Kingdom. The report says that of those returned during this period, 7,520 out of 48,565 were identified as unsuccessful asylum seekers. These figures must be treated with caution because firstly the allegations of ill treatment may be under-reported but equally the number of returns is likely in reality to be considerably larger than the figures given for the reasons set out in paragraph 6.104. It must also be taken into account that where particular incidents have been investigated, whilst some have been found to be well-founded, others have been found to be incorrect or implausible.
13. In the Tribunal's view it is also significant that the voluntary return of Turkish nationals from Northern Iraq has been facilitated by the UNHCR who paid frequent visits to returnees in various provinces in

order to observe the results of voluntary repatriation. The UNHCR was satisfied that returnees as a category have not been subject to persecution or reprisals in Turkey. It must of course be noted that this conclusion is made in the context of the voluntary return of nationals from Northern Iraq to Turkey.

14. In assessing the risk on return it is important to keep in mind the current situation in Turkey. In September 1999 PKK combatants confirmed that they would cease operations. The armed conflict between the Government and the PKK effectively came to an end and in October 2000 the Turkish armed forces announced that they had successfully completed their struggle against the PKK. In August 2002 the Turkish Parliament approved a package of key democratic reforms designed to improve Turkey's chances of EU membership. One Turkish human rights activist has described the reforms as the most positive changes made during the history of the Turkish Republic. In the Human Rights Watch report it is commented that during the past year there have been more substantial human rights improvements than in any year since the 1980 coup but the report added that there were two areas needing action, torture and freedom of expression.
15. It is against this background that the risk to the claimant must be assessed. The Adjudicator concluded that it was doubtful that in the ordinary course of events he would be of interest to the authorities. She noted that he had spent 10 to 15 days in Istanbul. He said that he had remained indoors with his relatives. She commented that if the authorities had wanted to find him, she imagined that they could have traced him. She did not believe that the authorities wanted him to be an informer. However, she concluded that he would be at risk on return as his history would be known to the officials concerned.
16. Looking at the background evidence, in our view the issue crystallises into whether there would be any reason for the authorities to suspect that the claimant had been involved in separatist activities (CIPU paragraph 6.88) or had been in contact with illegal organisations abroad (paragraph 6.90). The claimant does not say that he is a member of the PKK. There is no suggestion that he has recently given support or shelter to that or any other militant organisation. His involvement has been at a minimal level. His last detention was in September 2000 when he was released, on his own account, after denying involvement with the PKK. He was subjected to severe ill treatment on that occasion. However, he was not charged and no reporting conditions were placed on him. He has no family connection with the PKK or HADEP. He left Turkey a matter of weeks after his last detention spending 10 to 15 days in Istanbul and making arrangements for a clandestine departure and arrival in the United Kingdom.
17. There is nothing to suggest that he has been kept under surveillance. There is no state of emergency in his own province. In these circumstances in the view of the Tribunal there is no real risk that the

Turkish authorities would have any reason to suspect that the claimant was a separatist or had been in contact with illegal organisations abroad. There is no reason to believe that he is wanted by the authorities in Turkey. This is a situation where the authorities would have no definite suspicion about the activities of the claimant. In the view of the Tribunal when the claimant's personal history and background is set against the evidence relating to the current situation in Turkey and the practices followed on return, there is no real risk of the claimant being detained or ill treated on arrival. In our judgment the Adjudicator's assessment of the risk on return was not correct.

18. In these circumstances the Secretary of State's appeal is allowed on both asylum and human rights grounds.

**H J E Latter**  
**Vice President**