

JH
Heard at Field House
On 28 October 2002

APPEAL NO CC28509-2002
YK (PSG-Women) Turkey CG
[2002] UKIAT 05491

IMMIGRATION APPEAL TRIBUNAL

Determination notified:

Date

28 November 2002
.....

Before
:

Mr. R. Chalkley (Chairman)
Mr N Kumar, JP

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

APPELLANT

and

Yasemin Kircicek

RESPONDENT

DETERMINATION AND REASONS

1. *Mr M O'Donell, Counsel instructed by Brighton Housing Trust appeared on behalf of the respondent and Miss V Sigley, a Home Office Presenting Officer, appeared on behalf of the appellant.*
2. The appellant, the Secretary of State for the Home Department, appeals with leave against the determination of an Adjudicator, Ms C Jarvis, allowing an appeal against the applicant's decision on 22 April 2002 to issue removal directions after refusing asylum. The respondent (to whom we refer as "the claimant") is a citizen of Turkey who was born on 7 June 1977 and who arrived in the United Kingdom on 26 March 2000. She was granted leave to enter to work as an au pair until 26 March 2002 and sought asylum by post on 21 March 2002.

3. The claimant had maintained a fear of persecution from her father, who it was claimed, has arranged her marriage without her consent. She fears persecution also from her intended husband and his family.
4. Addressing us on behalf of the appellant, Miss Sigley said that the Adjudicator had found that the claimant had a well founded fear of persecution in the whole of Turkey on her return there now by reason of her membership of a particular social group. That was "Women in Turkey who have transgressed social norms and are accused of having brought dishonour and shame upon their families". The Adjudicator, quite rightly, referred to the decision of the House of Lords in Shah & Islam [1999] Imm AR 283 in paragraph 47 of her determination. However, submitted Miss Sigley, Turkey is not comparable to Pakistan. In Pakistan laws existed which actively discriminated against women. That could not be said to be the case in Turkey. She referred us to the Country Information and Policy Unit Assessment dated April 2002 and to paragraphs 5.1.47 and 5.1.48. These say:

"5.1.47. Spousal abuse is serious and widespread. Legislation passed in January 1998 made spousal abuse illegal and either sex may file civil or criminal charges. However, police are reported to be reluctant to intervene in domestic disputes and frequently advised women to return to their husbands. "Honour" murders – the killing by immediate family members of young unmarried girls who are suspected of being unchaste – have become less common but continue in rural areas. The government banned the practice of forced virginity testing in January 1998. Under the new law, a girl cannot be medically tested to establish her virginity, unless those demanding it have authorisation from the Justice Ministry. In 1998 the Constitutional Court annulled Article 440 of the Penal Code, which punished women, but not men, for infidelity.

5.1.48 With effect from 1 January 2002 Turkey's civil code was revised so that the man is no longer head of the household, and giving both man and woman equal rights in the management of the marriage and the household. The woman can keep her maiden name and add her husband's last name to her name. The minimum marriage age for both men and women was increased to 17."

5. Miss Sigley suggested that reference in paragraph 5.1.47 to the police being "reluctant to intervene in domestic disputes",

is not indicative of the police being unwilling to investigate crime. Even the police in the United Kingdom are reluctant to intervene in domestic disputes, she added.

6. Miss Sigley then referred us to page 69 of the claimant's bundle which referred to, "a sweeping overhaul of Turkey's Civil Code intended to end discrimination against women" which came into force on 1 January 2002 and was said to be part of the country's initiatives to bring its laws into line with the European Union.
7. By defining the social group as "women in Turkey who have transgressed social norms and are accused of having brought dishonour and shame upon their families" it is not clear that the group can exist independently of the persecution. The only two sources of her fear are from her father and from her intended husband. They would not wish to persecute anyone else who might fall within the Adjudicator's definition of the group.
8. At paragraph 34 of her determination, the Adjudicator says,

"There is nothing before me to show what, if anything, the authorities could or would do for a woman such as the appellant, were she to report to them on her arrival in Turkey."

She suggests that the authorities could not give protection. However, submitted Miss Sigley, the objective evidence clearly shows that the authorities in Turkey are not only willing but also able to offer protection. She referred to paragraph 5.147 of the CIPU Report (see above) and to page 5 in the claimant's bundle and the section headed, "Women", in the US State Department report. It says:-

"The law allows women to apply for restraining orders against their husbands and therefore to stay in their own homes. Observers and government officials noted that this provision has been very successful in some of the cities and rural areas of the country but less so in the more traditional south east."

9. It also referred to nine government sponsored shelters and six consultation centres for battered women in addition to the Child Protection and Social Services Agency provision of services to victims of domestic violence through 19 social centres. In describing "honour killings", it said that the government authorities have tried to send a clear message of intolerance for this practice through the prosecution of those responsible for killings. Reference was also made in the US State Department report to sentence reductions for juvenile offenders. It reported that young male relatives are often

designated to perform the killing and referred a case in June where three brothers were convicted of murdering their 15-year old sister after she ran away from an arranged marriage for an older man. The Court imposed sentences of between four and twelve years. She asked us to consider this: if the authorities in Turkey do not act, then why is it that families use young children to perform honour killings? She suggested that it was because it is known that younger people receive a lighter sentence after they have been convicted. The point is, she submitted, that the government do act and do investigate and prosecute people.

10. In paragraph 43 of her determination the Adjudicator suggests there is a lack of evidence of protection being offered by the government, but at page 42 of the claimant's bundle it was clear that the government were trying to respond. Page 75 of the claimant's bundles referred to having spirited away someone to a secret location, in the certain knowledge that if her male relatives found out where she were she would be killed. At page 76 of the claimant's bundle reference was made to the local gendarmerie who, if they were to find a girl who has run away from home to elope or escape death before her male relatives found her, she would immediately be sent to a state foster home in Ankara. It also referred to a witness protection programme where girls are given a new secret identity and forwarded to another Turkish city, the name of which is kept secret. It appeared, submitted Miss Sigley, that the Adjudicator had not considered this evidence.
11. In paragraph 44 of her determination, the Adjudicator speculated on the question of relocation. She suggested that the claimant would be required to register with the local authority if she were to move, which in turn would make enquiries of the authorities in Izmir, who in turn may disclose her whereabouts to her family. However, paragraph 4.10 of the Country Information and Policy Unit report suggested that the practice of anyone taking up residence in or leaving a particular neighbourhood and then reporting to the local head man, the "Muhtar", is often not done. It was pure speculation that if the claimant relocated, her details would be passed to her local authority and similarly that the local authorities in her area would then tell her family.
12. In paragraph 45 of the determination, the Adjudicator refers to the Fazilet Party having been banned but says,

"There is nothing in the evidence to show that Osman and his family would not be in a position to use the links of the successor parties to the Fazilet Party to seek and find the [claimant]."

However, submitted Miss Sigley, there was no evidence to show that they would. The US State Department report (reproduced at page 5 of the claimant's bundle) shows that women generally receive equal pay for equal work in the professions, business and civil service jobs and were she to relocate she would be able to obtain employment, just as anybody else with her skills and intellect would be able to. Miss Sigley acknowledged that, as a single woman she may face acts of discrimination, but there was no evidence to suggest that such discrimination would reach the threshold to engage her rights under Article 3.

13. She invited us to allow the Secretary of State's appeal.
14. Mr O'Donnell had taken the time and trouble to prepare a written submission. The Tribunal were most grateful to him. We have very carefully read the submissions. As a preliminary point, it was suggested that since the Secretary of State had not sought to argue before the Adjudicator that the claim did not engage the 1951 Convention, it was not open to the Secretary of State now to challenge the Adjudicator's findings that the claimant came within the category of a particular social group. He agreed, however, that there was no explicit concession made by the Secretary of State that the claim did engage the 1951 Convention.
15. He submitted that the claimant's fear existed independently of the definition used by the Adjudicator. The claimant has transgressed social norms because she is not now a virgin and this will become known. Discrimination will be tolerated by the State. The law in Turkey clearly does discriminate against women and one example of this is the lesser sentences imposed for those involved in honour killings. Judges consider tradition and there is great community pressure on them to lighten the sentence. Women occupy secondary status in Turkey and although Turkish law does not go as far as it does in Pakistan, there is no significant distinction. She forms a member of a social group, namely women who have transgressed social norms in Turkey.
16. As to internal flight, Mr O'Donnell suggested that the Adjudicator had found that the claimant had a well-founded fear throughout Turkey. As a result, since there had been no challenge to the finding that the claimant had a fear throughout Turkey it was not now open to the Secretary of State to raise this issue. Leave had been granted on the basis of the claimed lack of Convention reason and internal relocation, but it had been found by the Adjudicator that the claimant had a well-founded fear of persecution throughout Turkey and, consequently, internal relocation was not

applicable. He conceded that the Adjudicator had been wrong to allow the claimant's Article 12 claim but suggested that the Adjudicator's finding that Article 8 would be breached had not been challenged and could not therefore be raised by the appellant.

17. Responding, Miss Sigley acknowledged that the application for leave had not specifically referred to Articles 8 and 3, but submitted that the whole appeal must either stand or fall together. The appellant's attack on the determination is a general one. The Adjudicator was wrong, she submitted, to find that the claimant was a member of a particular social group, but in any event was also wrong to find that the government in Turkey could not, or would not offer protection. What the Adjudicator had effectively done in paragraph 53 of her determination, was to say that in the light of her findings in respect of the refugee aspect of the appeal, it followed that she must allow her claim under Articles 3 and 8. It was clear from the determination itself that the Presenting Officer who had appeared before the Adjudicator had specifically made reference to relying on the Secretary of State's refusal letter and that itself claims that the claim did not engage the Convention.
18. It was clear, she said, that the State were not either unwilling or unable to offer State protection. If protection is available then it is clear that the claimant could go and live elsewhere in Turkey.
19. We reserved our determination.
20. The Tribunal is satisfied that, on the evidence placed before the Adjudicator, it is clear that the authorities in Turkey are both willing and able to offer protection to unfortunate young women in the claimant's situation. The article "Loss of Honour Means Death in Turkish Region" reproduced at pages 75, 76 and 77 in the claimant's bundle clearly shows that the authorities do act to offer protection where it is sought. Reference was made to one specific case where the authorities had spirited away a girl to a secret location in the knowledge that, if her male relatives found out where she were they would kill her. Reference was also made to the fact that if the gendarmerie were to "get hold of a girl who has run away from home to elope or escape death before her male relatives do, she is immediately sent to a state foster home in Ankara". Reference was also made to witness protection programmes, which would ensure that such a person would be given a new identity and sent to a secret location in Turkey. In the report of the Special Report on Violence Against Women submitted to the Economic & Social Council of the United Nations and

reproduced in the claimant's bundle, reference is made (at page 95) to killings being carried out mainly

"by under-age males of family to reduce the punishment. They are then treated as heroes. The action is further endorsed by their fellow inmates in prison, if they are sent there, who wash these young boys' feet and tell them they are now "complete" men."

That suggests that the State do punish those involved in "honour killings". The extracts from the US State Department report clearly show that the government sponsor shelters and consultation centres for battered women. Changes in the law recently introduced make spousal abuse illegal and now acknowledge the equal roles of both men and women in the management of the marriage and household.

21. In paragraph 47 of her determination, the Adjudicator referred to **Shah and Islam**. Referring to the judgment of the House of Lords, she said,

"Women in Pakistan are members of a particular social group. They all share the immutable characteristics of gender and are discriminated against by the society in which they live and as a group are unprotected by the State".

The same cannot, however, be said of women in Turkey. Whilst undoubtedly they still suffer acts of discrimination, they can no longer be said to be discriminated against by the law and, we find, they are not unprotected by the State. We do not find that societal discrimination against women is either condoned or sanctioned by the State in Turkey. There is clear evidence to the contrary in the claimant's bundle which, we note, was before the Adjudicator.

22. The Tribunal finds that the claimant's fear is not one which engages the Refugee Convention. It also finds that on her return to Turkey she can and will be offered protection by the Turkish authorities, should she choose to seek it. Her rights under Articles 3 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms will not be breached.
23. The Tribunal allows the Secretary of State's appeal.

Mr. R. Chalkley
Vice President

