

LSH
Heard at Field House
On 7 May 2002

APPEAL NO HX24766-2001
DS (Risk - ODP) Turkey CG
[2002] UKIAT 02563

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified: 11 July 2002

Before:

**Mr G Warr (Chairman)
Mr R Hamilton**

Between

DURAN SARIKECILI

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant a citizen of Turkey, appeals the determination of an Adjudicator (Mr M P Keane) dismissing his appeal against the refusal of the Secretary of State to grant his application for asylum.
2. The appellant was represented before us by Mr R M Ramdas-Harsia, of Counsel, instructed by Howe & Co. Mr M Pichamuthu appeared for the Secretary of State.
3. Howe & Co had lodged a bundle of 293 pages which arrived on the day of the hearing. Mr Pichamuthu did not have the bundle at all. It must be clearly understood that the late production of material in such a case is of no service to anyone. The reason given by the solicitors for the delay (fundamental restructuring of our office) is wholly unacceptable. In the event Counsel did not refer to the bundle and we sincerely hope the cost of generating it will not be met by the appellant or by public funds.
4. The background to this case is as follows. The appellant was born on 3 January 1964. He arrived in this country and claimed asylum

on 14 January 2001. He claimed he had become a member of the ODP in 1996 and that he had been arrested and ill-treated by the police on several occasions. His final arrest had been on 21 November 2000 during a demonstration in Ankara. He had been held for one week and then released because of a lack of evidence.

5. The Secretary of State did not consider that the appellant's low level of political activism with the ODP would get the appellant into trouble on his return and there were doubts concerning the appellant's general credibility.
6. The Adjudicator, in a long and careful determination, in which he took fully into account the objective and other material before him, concluded that the appellant's account was, as the respondent had asserted, not a truthful one. The most that the Adjudicator was prepared to accept was that the appellant was a member of the ODP and that he had undertaken activities on behalf of that party. He expressly did not accept that the family had a high political profile or that either the appellant or his father was deeply involved with DEV-YOL. He did not accept that the appellant had been arrested, detained or ill-treated by the Turkish authorities on a number of occasions in connection with his political involvement, either with DEV-YOL or with the ODP. The Adjudicator was not impressed by the documentary material before him and did not accept that the appellant had written two articles which had been published in a newspaper. The Adjudicator concluded from his analysis of the objective material that the appellant would not be of interest on return to Turkey because of his membership and activities with the ODP.
7. Counsel acknowledged that the Adjudicator had found the appellant not to be credible and that the question was whether the appellant would be at risk on return as a failed asylum seeker. He submitted that the appellant would have to undergo lengthy enquiries and his previous history, including his detentions and political profile would come to light.
8. Mr Pichamuthu submitted that the Adjudicator's credibility findings were clear and well reasoned. It was not disputed that the appellant might be questioned on return. The objective evidence demonstrated that if there were no link to any separatist organisation the appellant would be released. The ODP was a legitimate party and had contested parliamentary elections. There was no reasonable degree of likelihood of any risk upon return. The appeal should be dismissed. Counsel made no reply to this submission.
9. Counsel realistically did not press any argument concerning the Adjudicator's adverse credibility findings, and indeed his submissions were very short. In our view, the Adjudicator's

determination was a full, thorough and well set out document and there is really no cause to quarrel with any of his findings. He went into all the issues before him meticulously and we do not differ from him in any aspect of his assessment.

10. The sole question before us is whether the appellant, as an ODP member, would be at risk on return. Although it has been said in the grounds that the Adjudicator did not consider the question of the risks on return, we are not confident that that is the case. In paragraph 26 the Adjudicator said that the objective evidence did not support a claim that the Turkish authorities would harass and persecute members and activists of the ODP Party. It is true, however, that the Adjudicator did not give express consideration to what would happen to the appellant on return to Istanbul airport.

11. Mr Pichamuthu acknowledged that the appellant would be questioned at the airport. The question of the treatment of returned asylum seekers is dealt with in paragraphs 7.3.7 to 7.4.6 of the Home Office Country Assessment dated October 2001. It is there pointed out that there was no organisation that consistently or formally monitored the treatment of returnees to Turkey. With that caveat, we find that the country assessment attempts to give a considered and balanced view of what a returnee can expect. The returned individual will face questioning and, in general, there was no follow-up unless the person was the subject of legal proceedings. If the returnee was, however, known to the police for any reason, he would possibly be taken into custody for more interviews. Paragraph 7.38 deals with returnees without documents. The Home Office, in fact, provide documentation for returnees. However, even undocumented returnees are, according to the assessment, "generally not being maltreated while being kept in custody." The report adds the qualification that ill-treatment cannot be ruled out in cases where returnees are suspected separatists. Being of Kurdish origin did not in itself constitute a higher risk of inhuman treatment (see paragraph 7.40). Everything depended on the individual and his activities in Turkey and abroad. Counsel submits that when the appellant faced interrogation, his previous record would come to light. However, the Adjudicator expressly disbelieved that the appellant had such a record. The most that he was prepared to accept was his membership of the ODP. The ODP features in Annex B to the Country Assessment, along with other parties which contested parliamentary elections. Mr Pichamuthu submits that the appellant's low level political profile with the ODP would be unlikely to cause him difficulties on return and we are not satisfied with the way it is put in the grounds of appeal that the appellant's membership of the ODP would expose him to problems because it would be perceived that he would be linked with DEV-YOL. Our attention was not directed by Counsel to material demonstrating that the appellant would be at risk because of his ODP membership.

12. While there are serious problems in Turkey, since December 1999, the country have been given official status as a candidate for European Union Membership and this appears to have given an added impetus for reform. In March 2001 the government published its "national programme for the adoption of the Acquis" which set out the steps which were planned to enable to Turkey to meet the criteria for EU membership – see paragraph 3.36 of the Home Office Country Assessment. On 3 October 2001 a large legislative overhaul was undertaken and 34 amendments to the constitution were affected. Restrictions on using the Kurdish language were eased and the maximum detention periods for suspects prior to charge were reduced. There were other initiatives. Implementation would require legislative changes to the Penal Code or other enabling legislation. However, these are encouraging developments.
13. While the Adjudicator did not expressly consider the question of risks on return, we are not satisfied having looked at the matter ourselves, that the appellant would be subject to more than routine questioning on his arrival. On the material to which our attention has been drawn, it is not established to the required standard that any fears the appellant entertains about what will happen to him on his return are well-founded.
14. For the reasons we have given, this appeal is dismissed.

G Warr
Vice President