IMMIGRATION APPEAL TRIBUNAL

Appeal No: SF (Article 3- Prison Conditions) Iran CG [2002] UKIAT 00973
CC-32925-2001

Date heard: 21/03/2002
Date notified: 04/04/2002

Before:
Mr Justice Collins, President
Mrs D E Taylor
Mr T S Culver

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

SAYED MEHDI FAZILAT
Respondents

Determination and Reasons

1. This is an appeal by the Secretary of State against a decision of an Adjudicator, Mr P M Fairclough, who dismissed the appeal by Sayed Fazilat, whom we shall call the Respondent against the refusal of asylum, but allowed his appeal on the basis of the Human Rights Convention. The result of that was that the removal directions were set aside.

2. The Respondent is a citizen of Iran. He said that his problems began in that country in about November 1998 when he was working at an oil refinery. There were foreign workers involved; he became friends with the supervisors of an Italian company, and as a result he agreed to provide them with a supply of alcohol. He appreciated the risks that he was running because to act in that way was to breach the law in Iran. In due course, the vehicle which he was driving was stopped and searched and alcohol was discovered. As a result, the Respondent was arrested. He was ill-treated, he says, at the police station but was eventually taken to court to be dealt with. He was accused not only of supplying alcohol, of which he was clearly guilty, but also of smuggling and he was not, he said, guilty of that. As a result, when he raised this before the Judge, the order was that the police should go and obtain evidence. In the meantime, unless the Appellant could find bail, he would be remanded in custody. In due course, he was granted bail although apparently he was informed, or so he says, that he faced a sentence of 5 years imprisonment were he to be convicted.

3. He thereafter decided to enrol in university in order to obtain a degree in chemical engineering. In 1999, he was involved in student demonstrations at the university, which received subsequently a large degree of publicity. They are referred to in some detail in the US State Department Report, to which we have been referred, of February 2001. What is there said, and it describes the situation, is this:

"On July 8th 1999, students of Tehrain University, who were protesting at proposed legislation by the Majiles that would limit press freedoms, and the government's

closure of a prominent reform orientated newspaper, were attacked by elements of the security forces and Ansar-e Hezbollah thugs. Police reportedly looked on and allowed repeated attacks against the students."

It goes on to state that some four students were killed, and some 300 wounded and 400 detained, and as a result, demonstrations continued to grow and in the end some 1500 students were apparently arrested, 500 were released immediately after questioning, 800 were released later and formal investigations were undertaken against the remaining 200. In the end, four student leaders were sentenced to death, but that was commuted to a sentence of imprisonment.

4. The Respondent says that he was involved in these demonstrations. He was arrested, but the police recognised, after questioning him, that he was not in any way one of the leaders. He then describes how he managed to escape, in circumstances where he was lined up with others, and for some reason one of the officers in charge was called away. That left only a very few officers to deal with a considerable number of the students, and at a signal they all ran away, the Respondent successfully.

5. Some ten months later, he left the country having paid $10,000 to an agent and made his way to this country, entering clandestinely in the back of a lorry. He says that he remained in hiding.

6. The Secretary of State refused his asylum claim on 27 March 2001 and the refusal letter sets out in some detail the reasons why the Secretary of State was refusing the claim. Essentially, he did not believe the Respondent's account of the reasons why he had left Tehrain and the details that the Secretary of State gives are, on their face, relatively persuasive.

7. When the matter came before the Adjudicator, he heard evidence from the Respondent and he concluded that the Respondent was an honest and reliable witness and that, although there were slight discrepancies between his oral evidence and the interview record, nevertheless he was satisfied with the Respondent's evidence and found that it was entirely credible. He does not give any reasons for reaching those conclusions. Nonetheless, they are conclusions which he was entitled to reach and we do not go behind them.

8. He referred to the two main items on which the Respondent relied in support of the appeal. First, the charge of smuggling alcohol, and secondly, the offence of being involved in unlawful demonstrations and escaping from detention. He points out that so far as the alcohol offences were concerned, the result would be prosecution rather than persecution. He did not specifically reach any conclusions as to what might happen in relation to the unlawful demonstrations. He stated that on return he would be questioned and he would face probable charges, first, as a returnee after an unsuccessful asylum claim (there is objective evidence contained in the CIPU Report which indicates that merely to have made an unsuccessful asylum claim is not something which normally results in prosecution in Iran) and the Adjudicator went on that there was evidence to suggest that for that alone he might face questioning and possible punishment. As we say, we do not accept that there is on the objective evidence a real risk of that happening on the ground of being a returning asylum seeker. There is, however, the possibility that he might be questioned, and possibly

prosecuted, for having left the country unlawfully because that, undoubtedly, is a matter which can give rise to a possibility of prosecution. It may not, and in the case of an unsuccessful asylum seeker there is no certainty, there may even not be a probability but there is we accept a possibility. The Adjudicator went on to say that he would almost certainly be charged with the alcohol smuggling. That we do not doubt may well be the position. And finally he would face charges for escaping detention following the attending of the demonstrations. Again, that may or may not be the case.

9. The Adjudicator decided finally that he was not, as he put it, entirely satisfied with the asylum claim for convention reasons, but was persuaded that the Respondent was entitled to succeed on human rights grounds.

10. There is no appeal against the rejection of the asylum claim, and therefore we have to approach this case on the basis that that rejection cannot be impugned. We are bound to say that we find the Adjudicator's decision thoroughly unsatisfactory. It amounts to an assertion and it is difficult to see why he should be satisfied with the asylum claim, but to have rejected it for convention reasons if he was persuaded that there would be a real risk of action being taken against the Appellant on the basis of his involvement in the student demonstrations, because that might, and certainly the Adjudicator should have considered whether it would, provide a convention reason. However, as we say, we do not and we cannot go behind that finding.

11. The reason why he found in favour of the Respondent on the human rights claim was because he took the view that, were he to be sent to prison, he would face unduly harsh conditions. When we say unduly harsh, we mean conditions which would amount to inhuman or degrading treatment. He also referred to the objective evidence which demonstrates that ill-treatment was commonplace in Iran and that security forces and prison personnel continue to torture detainees and prisoners. He also suggested that the Respondent would not receive a fair public trial and, although he does not say so in terms, it appears that he was satisfied that there would be a breach of Article 6 were he to be returned.

12. The Adjudicator has, in our view, taken an altogether uncritical approach to the evidence about the likelihood of ill-treatment and torture in detention. He has referred particularly to various passages in the United States State Department Report, to which we have already referred. Under the heading "Torture and other Cruel, Inhuman or Degrading Treatment or Punishment" we find this said:

"The Constitution forbids the use of torture. However, there are numerous credible reports that security forces and prison personnel continue to torture detainees and prisoners. Some prison facilities, including Tehrain's Evin prison, are notorious for the cruel and prolonged acts of torture inflicted upon political opponents of the government."

That may well be right, and it is perhaps not without interest that in the quotation in his determination, the Adjudicator simply refers to the first sentence of that passage. The reality is that, in our judgement, there is no real risk that this Respondent would be treated as if he were a political opponent.

13. Mr Schwenk has sought to persuade us that his involvement in the student demonstrations might well lead to torture and particularly harsh ill-treatment because he would be regarded as a political opponent. We find that fanciful. We know from the report that a large number of students were indeed arrested, but that all bar some few ringleaders were released and we know too that this happened now in the summer of 1999, nearly three years ago. We find it, to say the least, improbable that the Respondent would be regarded as someone who was politically dangerous. The reality is that he might well be arrested, might well be detained, but for the alcohol matter rather than any involvement in the student demonstrations. Albeit he says that he was in hiding, we cannot but note that he spent some ten months in Iran after he says that he ran away from the demonstration.It does not suggest that the authorities were particularly concerned to find out where he was. Indeed, we cannot believe that now, the student demonstrations having been long dealt with, and the time having moved on, and this Respondent on his own account being accepted as not being involved as a ring-leader, there is any real risk that he will be dealt with in respect of that matter.

14. There is a reference to general prison conditions upon which the Adjudicator relied. What is said in the report is this:

"Prison conditions are harsh. Some prisoners are held in solitary confinement or denied adequate food or medical care in order to force confessions. Female prisoners, reportedly, have been raped or otherwise tortured while in detention. Prison guards reportedly intimidate family members of detainees and torture detainees in the presence of family members. The UN Special Representative reported receiving numerous reports of prisoner overcrowding and unrest. He cited a reported figure of only 8.2 sq.ft. (2.52m) of space available for each prisoner."

Again, one notes that the main matter of concern there is that the ill-treatment is to force confessions. We do not find that, in the context of this case, that this Respondent is at all likely to face that. When we say at all likely, we do not mean to say anything about the standard of proof, we are fully aware of the approach that we have to adopt in the round whether we are persuaded that there is indeed established a real risk that this Respondent will face treatment contrary to Article 3.

15. We do not doubt that prison conditions in Iran are far from ideal. We do not doubt that they may not measure up to what is expected in this country, or perhaps in any country which is a signatory to the European Convention on Human Rights. As the Court at Strasbourg has recognised, it is not for signatories to the Convention to impose the standards of the Convention on all the world. Recognition has to be had to the situation in individual countries and to the standards that are accepted, and expected, in those countries. Of course in relation to Article 3, there is a line below which the treatment cannot sink, if we may put it that way. That is to say that it is always possible that the sort of treatment that may be routinely expected in prison in a particular country falls so far below the standards that would be expected in a civilised country, that it could properly be said to amount to inhuman or degrading treatment. But, as again the Court in Strasbourg has indicated, the threshold has to be a high one because, otherwise, it would be, as one recognises, quite impossible for any country to return to a non-signatory an individual who faces prosecution, rather than any sort of persecution. The conditions may well be regarded as harsh. That is a value judgement and there is no sufficient indication from the material before us that

this Respondent would run the risk of facing treatment which amounted to a breach of Article 3. As we have said, the Adjudicator's conclusions that such treatment would be afforded him are based on a wholly un-critical approach to the material that was before him.

16. So far as the question of fair trial is concerned, Article 6 can be engaged if an individual is to be removed from this country. That is made clear by the decision of the Tribunal in Kajac following the Court of Human Rights decision in Sering v United Kingdom. But, it is only if the breach of Article 6 would be flagrant, that is to say that there would clearly be a thoroughly unfair trial, that Article 6 could be engaged. Again, it is not for the signatories to the Convention to impose their system on all the world. One has to consider whether, looking at it again in the round, it can be said that the Respondent will be able to receive what amounts to a reasonably fair trial. So far as criminal charges are concerned, and the alcohol offences are criminal charges, as would be any charges relating from unauthorised leaving of the country or indeed from unauthorised escape from custody, if anything were done in relation to these student offences, there is no reason to believe that there would be any flagrant breach of Article 6 whatever may be the shortcomings, and there are shortcomings, of the Iran system of trial.

17. In all those circumstances, we are persuaded that the decision of the Adjudicator cannot stand, and having rejected the asylum claim he ought also to have rejected the human rights claim. Accordingly, we allow the Secretary of State's appeal.

Mr Justice Collins (President)