



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/02569/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

**On 16 October 2015
and 13 November 2015**

On 20 November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

**BY
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Panagiotopoulou (for Sentinel and Co Solicitors)

For the Respondent: Ms Willocks-Briscoe (Presenting Officer) (error of law hearing)

Mr S Kandola (Presenting Officer) (continuation hearing)

**DECISION AND REASONS
ERROR OF LAW HEARING**

1. This is the appeal of BY, a citizen of Turkey born 8 August 1993, against the immigration decision arising from the Secretary of State's refusal of his asylum claim of 6 February 2015.

2. His claim was based on being a person of Kurdish ethnicity of the Alevi faith, who had worked as a shepherd, and who had been detained on 21 March 2013 by the police following his attendance at a Newroz celebration in Golbasi: he was held for a day at the Gendarme Station and beaten, his family were insulted and he was accused of being a terrorist. He was released without charge with a warning that the authorities would keep an eye on him and the threat that in future they would do whatever was necessary to serve their purposes; they took his fingerprints and forced him to sign a blank page. On 6 June 2013 police and gendarmes came to the mountain whilst he cared for his livestock, again accused him of being a terrorist, and asked him to reveal the whereabouts of any local guerrillas: they beat him, broke three of his teeth, shot at his feet, and killed his dog. He was taken to the Yahdarli Village Gendarme Station, held for four days, where they beat him, insulted him and issued him with death threats. He was released after four days because of a lack of evidence, in return for undertaking to provide information about the guerrillas to the authorities in future: he again signed a blank piece of paper. Upon his release he escaped to Gaziantep and stayed there for three months before leaving the country by lorry to Bulgaria on 1 September 2013, arriving in the United Kingdom on 6 September 2013.
3. The First-tier Tribunal dismissed his appeal. Whilst he was accepted as being a generally credible witness [38], it was noted that his failure to claim asylum upon arrival in the United Kingdom and without claiming asylum in Bulgaria had some impact on his credibility. What concerned the First-tier Tribunal, however, was that applying the guidance in *IK (Returnees - Records - IFA) Turkey CG* [2004] UKIAT 00312, the Appellant had not established himself as at risk. The relevant part of the Country Guidelines is as follows:
 - "46. The following are the factors which inexhaustively we consider to be material in giving rise to potential suspicion in the minds of the authorities concerning a particular claimant.
 - a) The level if any of the appellant's known or suspected involvement with a separatist organisation. Together with this must be assessed the basis upon which it is contended that the authorities knew of or might suspect such involvement.
 - b) Whether the appellant has ever been arrested or detained and if so in what circumstances. In this context it may be relevant to note how long ago such arrests or detentions took place, if it is the case that there appears to be no causal connection between them and the claimant's departure from Turkey, but otherwise it may be a factor of no particular significance.
 - c) Whether the circumstances of the appellant's past arrest(s) and detention(s) (if any) indicate that the authorities did in fact view him or her as a suspected separatist.
 - d) Whether the appellant was charged or placed on reporting conditions or now faces charges.
 - e) The degree of ill treatment to which the appellant was subjected in the past.

- f) Whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP.
- g) How long a period elapsed between the appellant's last arrest and detention and his or her departure from Turkey. In this regard it may of course be relevant to consider the evidence if any concerning what the appellant was in fact doing between the time of the last arrest and detention and departure from Turkey. It is a factor that is only likely to be of any particular relevance if there is a reasonably lengthy period between the two events without any ongoing problems being experienced on the part of the appellant from the authorities.
- h) Whether in the period after the appellant's last arrest there is any evidence that he or she was kept under surveillance or monitored by the authorities.
- i) Kurdish ethnicity.
- j) Alevi faith.
- k) Lack of a current up-to-date Turkish passport.
- l) Whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the appellant since he or she left Turkey.
- m) Whether the appellant became an informer or was asked to become one.
- n) Actual perceived political activities abroad in connection with a separatist organisation.
- o) If the returnee is a military draft evader there will be some logical impact on his profile to those assessing him on his immediate return. Following Sepet of course this alone is not a basis for a refugee or human rights claim.

47. We cannot emphasise too strongly the importance of avoiding treating these factors as some kind of checklist. Assessment of the claim must be in the round bearing in mind the matters set out above as a consequence of a careful scrutiny and assessment of the evidence. The central issue as always is the question of the real risk on return of ill treatment amounting to persecution or breach of a person's Article 3 rights. The existing political and human rights context overall is also a matter of significance as will be seen from our assessment of the particular appeals in our determinations of those below. The particular circumstances that prevail today may not be in existence in 6 months time for all we know."

4. Faced with this Guidance, the First-tier Tribunal found that the Appellant was most likely truthful as to the basic facts of his two detentions, and that he may well have been subject to ill treatment during those detentions; whilst not seeking to minimise the discomfort and distress he may have suffered, it was not "equivalent to torture or inhuman treatment." The Appellant had not shown he was viewed by the authorities as a suspected separatist and he was not charged following either detention. He had not shown that the authorities had shown interest in him since he left Turkey, and had not involved himself in

separatist activities here. His faith and ethnicity, whilst accepted, would not themselves cause him to face any risk of serious harm.

5. Permission to appeal was granted on the basis that the Tribunal had unduly relied on relatively old Country Guidelines without regard to up-to-date human rights reports, given the current situation in southeast Turkey. There was no restriction on the grounds of appeal, which had also challenged the approach to the Appellant's ill treatment and the overlooking of his witness statement evidence that the authorities had sought him at his family home since he left the country, and his evidence that relatives of his had fled the country due to persecution.
6. At the error of law hearing I found that the decision was flawed by material errors of law, because
 - (a) The First-tier Tribunal misdirected itself as to the relevant legal test for "persecution" which is set out in the 2006 Protection Regulations, and in any event made a decision that was contrary to authority, given that the Appellant's account of being shot at, threatened, abused and beaten in detention because of his ethnic origin or presumed political affiliation satisfies the definition of inhuman and degrading treatment given in *Selmouni v France* - 25803/94 [1999] ECHR 66: and given that Immigration Rule 339K requires that special attention be given to an asylum claim where there is an accepted history of persecution, or threats of the same, this may have had an impact on risk assessment;
 - (b) Several relevant factors from the Country Guidelines were overlooked, given that there was witness statement evidence before the First-tier Tribunal which it did not reject, in a context where the Appellant's credibility was generally accepted, that "the Turkish authorities are still raiding my house and seeking to ascertain my whereabouts" and that relatives of his had been granted asylum in the United Kingdom: these factors, particularly the former, had a real bearing in assessing the dangers the Appellant might face on a return applying *IA Turkey* as they potentially relate to "whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the Appellant since he or she left Turkey" (factor (x)) and to whether he had family connections with a separatist organisation.
7. Further evidence was supplied for the continuation hearing by way of refugee status grants to his aunts Fatima Yurdsuz on 15 January 2001 and Turkan Kop on 24 October 2002; various other passport pages recorded that other relatives were British citizens, manuscript notes in the bundle asserting that this was predicated on their prior residence here as recognised refugees.
8. At the continuation hearing, it was agreed between the parties that the historical facts advanced by the Appellant had been largely accepted by the First-tier Tribunal. Nevertheless, given that the First-tier Tribunal had overlooked material evidence of post-departure interest, it would be

appropriate to permit the Appellant to give further evidence about that subject if he wished, and for Mr Kandola to cross examine him on the issue in any event. Ms Panagiotopoulou stressed that as well as his witness statement evidence, at interview he had stated that “[t]hey occasionally come and threaten and verbally abuse my parents and asking my whereabouts and my parents are not disclosing any information to them”: the interviewer then asked him whether he could not relocate elsewhere to avoid problems, to which he replied that upon registration with a Mukhtar he would be detected once again.

9. No further evidence in chief being led from him, the Appellant offered himself for cross examination. He said that the authorities were looking for him after he had left Turkey and repeatedly went to his home, as he learned from relatives in Gaziantep and in his village. He was accused of being a terrorist on those visits. They sought information about where the guerrillas were. He did not speak very much to his family as they were worried that their ‘phones might be tapped, so he was not sure of the frequency of the visits. He had family by way of siblings and parents who all lived together in the village. They had not been arrested in the last two years but had been under constant pressure from the visits; they had told the security forces that they did not know the Appellant’s present location.
10. Various passages from the country evidence reports that had been filed for the hearing have been drawn to my attention, particularly from the Respondent’s Country of Origin Information Report of August 2010 (which seems to be the last comprehensive report produced by the Secretary of State: both advocates based their submissions on a starting point that the prevailing country situation would not be very different from the picture painted by the Country Guidelines, whilst recognising that recent events would if anything bring about a heightened state of security) though also from some other sources, and I accordingly determine the appeal against the following backdrop gleaned from those reports (from the 2010 COIR unless otherwise stated):
 - (a) The security forces committed unlawful killings; the number of arrests and prosecutions in these cases was low compared with the number of incidents, and convictions remained rare, and torture, beatings, and abuse by security forces continued;
 - (b) Arbitrary arrest and detention, and unfair trials continued, especially under anti-terrorism legislation;
 - (c) The police routinely detained demonstrators and to detain persons on suspicion of 'membership in an illegal organization' and for 'promoting terrorist propaganda';
 - (d) Notwithstanding the government having professed a policy of 'zero tolerance towards torture', that claim appeared inconsistent with several other sources such as the European Commission Progress Report 2009 which considered that efforts to implement that policy had been limited, and that allegations of torture and ill-treatment, and impunity for perpetrators, remained a great concern;

- (e) The village guards, Jandarma, and police special forces were viewed as most responsible for abuses; corruption and impunity remained serious problems: those arrested for ordinary crimes were as likely to suffer torture and mistreatment in detention as those arrested for political offenses such as speaking out against the government, although they were less likely to report abuse); police ill-treatment occurred during arrest, outside places of official detention, and during demonstrations, as well as in places of detention;
- (f) Those known to have or suspected of having one or more family members in the PKK can expect some attention from the authorities. Depending, among other things, on the degree of kinship and the (suspected) position of their relative(s) within the PKK, family members may be subjected to varying degrees of intimidation, harassment, official obstruction, questioning and similar problems. It is perfectly conceivable, even probable in many cases, for the families of (suspected) PKK members to be kept under observation by the authorities or questioned and interrogated, also because they could as often as not be potential suspects themselves (COIR 2009);
- (g) In October 2014 security forces responded aggressively to protests, predominantly by Kurdish citizens of Turkey, throughout the Southeast in response to the government's perceived inaction to an ISIL attack on the largely Kurdish town of Kobani, Syria: human rights organizations continued to report allegations of torture and abuse, especially of persons who were in police custody but not in a place of detention, and during demonstrations and transfers to prison, where such practices were more difficult to document and prosecutors investigated allegations of abuse and torture by security forces during the year but rarely indicted accused offenders (the most recent US State Dept reports on Human Rights Practices: Turkey (25 June 2015));
- (h) Clashes between the security forces and the Kurdish insurgents (PKK) worsened in the east and south east - Ankara has reported 135 security officials killed and 278 injured, and 75 civilians killed in PKK attacks as of 28 Sept; PKK's armed wing People's Defense Force (HPG) reported 112 insurgents killed in same period, while govt has declared some 131 "temporary military secure zones" in over fifteen eastern provinces, and imposed curfews in Muş, Van, Şırnak and Diyarbakır provinces (Crisis watch database in its entry for Turkey of 1 October 2015);
- (i) Following Turkish airstrikes against PKK targets, highways between provincial centers in the eastern part of Turkey were frequently closed, and the situation was worrisome and reminiscent of the bloody years of the 1990s, when more than 40,000 lives were lost (Cengiz Candar writing in Al-Monitor, a news and commentary site launched in the aftermath of the Arab Spring that brands itself as "the pulse of the Middle East" and which has won the International

Press Institute (IPI) Free Media Pioneer Award in his article *Is Ankara headed toward all-out war with Turkey's Kurds?*).

11. For the Respondent it was submitted that, even acknowledging that the clampdown on the PKK had increased in the south east and noting the Appellant's statement that his relatives' 'phones might have been tapped, the Appellant was too low level to warrant ongoing attention from the authorities. In any event he could relocate to a main city, he was safe over the period that he lived away from his home area before for some two or three months.
12. For the Appellant it was submitted that he would face problems throughout Turkey as anti-Kurdish sentiment rose, and that it was clear from *IK Turkey* that he would be at risk on return: his family associations should not be overlooked, as the evidence suggested the security forces operated on the basis of assumption and suspicion, and his original detention arose not simply as part of a mass round-up but rather due to his individual activities distributing leaflets.
13. Ms Panagiotopoulou also relied on the skeleton argument provided for the continued hearing which set out the Appellant's case in full, emphasising that at interview he had explained how he had been interrogated, beaten and eventually released without charge and made to sign a blank document; on 6 June 2013 he had been violently beaten when the gendarmes approached him in the mountains. His details had been recorded and his fingerprints taken, and on both occasions he was forced to sign a blank document, and required to provide information to the gendarmes required on the second occasion. The Tribunal in *IK* had noted at [126] that there would be an obvious concern when a young man disappeared for many years without trace was whether he had joined the PKK over that period, and the airport security forces would be likely to raise the possibility with the authorities of his local area on a return.

Decision:

14. As was stated in *Mukarkar* [2006] EWCA Civ 1045 at [44]

"If a discrete element of the first determination is faulty, it is that alone which needs to be reconsidered. It seems to me wrong in principle for an entire edifice of reasoning to be dismantled if the defect in it can be remedied by limited intervention, and correspondingly right in principle for the AIT to be cautious and explicit about what it remits for redetermination."

There is no reason to differ from the credibility findings made by the First-tier Tribunal and indeed no suggestion was made at the continuation hearing that I should depart from them.

15. This leaves the question of how to approach the additional aspects of the Appellant's evidence which were before the First-tier Tribunal but overlooked. I have had the advantage of hearing the Appellant cross examined on the enquiries into his whereabouts by the security forces of which he has been told by his family. Given that those enquiries were

mentioned both in his Home Office interview and his witness statement, and that his oral evidence before me was perfectly consistent with that previously supplied, I consider that it is appropriate to accept this further element of his case to be established.

16. As to the asserted recognition of numerous family members as refugees, only two of the numerous relatives (his aunts) have provided documents attesting to their receipt of refugee status rather than simply providing grants of British citizenship. It is very likely that those grants were related to difficulties experienced by the Kurdish community in Turkey, given the prevalence of asylum claims of that nature and rarity of claims on other grounds amongst Turkish nationals. This does not add greatly to the Appellant's claim, but does demonstrate that he is from a family with many expatriates including at least two who have been accepted as possessing a well founded fear of persecution by this country's authorities.
17. Given that factual background, it can be seen that whilst the Appellant's original interaction with the security forces arose from a modest level of political involvement at a demonstration, nevertheless it seems clear that from that moment he became of interest to the authorities, and in turn at risk of serious violence (undoubtedly equating to serious harm, given that he was abused, threatened with death, and repeatedly beaten, suffering smashed teeth) at the hands of the security forces. His arrests and ill treatment were relatively recent, in the last two and a half years, and whilst he did not subsequently come to adverse attention before leaving the country, it must be recalled that by then he had relocated to Gaziantep, where he lived for some three months, which is approximately the same period over which he had previously been free from official attention until being ill-treated on a second occasion following his original arrest and detention.
18. There is clear evidence that his family has subsequently been subject to surveillance, and specific enquiries have been made as to his whereabouts, and as shown by the country evidence cited above, it is perfectly credible that the family of a suspected activist will receive some level of attention themselves albeit it is not necessarily the case that they will be persecuted.
19. So there are numerous material risk factors present in his case, and of course the danger he now faces must be assessed in the light of the deteriorating security situation in Turkey, where it is inevitable that the authorities will be especially interested in the activities of young men who have been absent from the country in recent years. Given the enjoiner in Immigration Rule 339K to give particular attention to threats and indeed the eventuation of serious harm where there has been no material change of country conditions, both his past problems with the security forces and the current country conditions render this guidance of particular importance. Given the fact that he has repeatedly been required to sign documents whilst in detention, and that his home has been the subject of visits from the security forces and his family

questioned as to his whereabouts, it seems to me that there is a real risk that he will feature on official records, including those computerised records held at the airport.

20. I therefore accept that the claimant would be at real risk of persecution or a breach of Article 3 in his home area as a consequence of his material history there, adopting the words as to the critical enquiry used in *IK Turkey* at [78]. That then leaves the question of whether he would be able to live elsewhere in the country, which in itself presupposes that he can pass through the airport controls without coming to adverse attention. As was found in *IK* at [82],

“... if a returnee is travelling on a one-way emergency travel document (and no failed asylum seeker will be returned to Turkey by the British government without appropriate travel documentation), or if there is no border control record of a legal departure from Turkey, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation.”

21. As was accepted in *A Turkey* “the computer system exists as recorded and that interrogations at the border take place ... if there was reason for a person to get into the hands of the Anti-Terror Branch then there was a risk of torture....” Subsequently the Tribunal in *IK* concluded that “The present evidence does not in our view establish either that there is no longer any real risk of torture in detention at all, or that there are now “torture free” areas in Turkey”. So I accept that the Appellant, being a person of whom it can be expected there will be records on the GTBS computer system, would face a real risk of mistreatment by the Anti-Terror Branch at the airport.
22. Even if that risk did not eventuate, then he would be unable to live in his home area, given the official interest to which he has been subject in recent times, and he would face a real risk of detection upon registration in another part of the country: as was stated in *IK Turkey*: “given the range of basic activities for which a certificate of residence is needed, we conclude that it would in most normal circumstances be unduly harsh to expect a person to live without appropriate registration for any material time as a requirement for avoiding persecution.” I do not consider that the short spell which he spent in Gaziantep before leaving the country can be equated with having found a durable safe haven, given that he would eventually need to register himself with the relevant authorities at which point there would be a real chance of his background coming to light.

The appeal is allowed.

ANONYMITY ORDER

I have found the Appellant to be a Convention refugee with family members remaining in Turkey. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies

both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date: 13 November 2015

A handwritten signature in black ink, appearing to read 'MASymes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Judge of the First-tier Tribunal

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed:

Date: 13 November 2015

A handwritten signature in black ink, appearing to read 'MASymes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes