

Federal Court



Cour fédérale

Date: 20131021

Docket: IMM-11458-12

Citation: 2013 FC 1056

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, October 21, 2013

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**IBRAHIM BAYRAK
YILDIZ BAYRAK**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] How often in one lifetime should a human being be subjected to aggressive acts, beaten, insulted, humiliated, degraded and treated like an inferior creature, rather than feeling the dignity that one is entitled to feel by virtue of having been born with intrinsic human worth?

[2] This is an application for judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board.

[3] Since their childhoods, the applicant and his wife have hidden their Kurdish identity and Alevi religion in Turkey to avoid being subjected to acts of discrimination and harassment.

[4] Each act of discrimination to which they were subjected was but one act; each incident of harassment was but one incident; however, over a sixty-year period, when is enough, enough?

[5] The inviolability of the human person is not an aspiration; it is a fact accepted by the majority of civilized countries, the States that have signed the United Nations' *Universal Declaration of Human Rights*, 1948, inspired by the most deeply held convictions of most of the civilized States after the Second World War with its gas chambers. The *Universal Declaration of Human Rights* was drafted by a team led by René Cassin, who remembered not only the genocide of the Second World War, but also the genocide of the Armenians in the early twentieth century in Turkey itself.

[6] In the case before this Court, certain acts of harassment could have been categorized as distinct, separate in time and space, from the cumulative discrimination and collective harassment of a population targeted by the Turkish government's agents of persecution; however, when we look at it cumulatively, all together, when is enough, enough?

[7] That the couple left Turkey, only to return on account of ageing parents several years ago, and that their son continued to live in the family home, in no way alters the fact that the

couple was subjected to acts of discrimination that were sporadic, but ongoing, throughout their lives.

[8] There is a continuity to these ongoing sporadic acts that should not be tolerated by a civilized society, a signatory to the *Universal Declaration of Human Rights* and the 1951 *Convention Relating to the Status of Refugees* [Convention].

[9] The Convention itself recognizes that discrimination may, in and of itself, with time and repetition, constitute persecution.

[10] Before the genocide of the Jews and the Romani reached its apex in the concentration camps, Adolph Hitler himself said that, if the world had forgotten the Armenians (their genocide by the Turks), it would also forget the Jews.

[11] The civilized world cannot turn a blind eye while these types of acts are perpetuated, lest its silence make it complicit in crimes against humanity involving gratuitous assaults on minorities.

[12] The case of this couple before the Court is an example of this and is the Convention's very *raison d'être*. So, according to the Convention, when is enough, enough?

[13] As the proverb wisely states, to forget our history is to repeat it. The Convention is in place to help us prevent such acts from being perpetrated repeatedly.

[14] The history of events recounted by the couple is uncontradicted; nowhere in the RPD decision is there a single word challenging the couple's story. Therefore, no doubts are raised about the couple's credibility.

[15] The RPD notes at paragraph 15 of its decision that “the series of events experienced by the claimants during their sixty years of residency in Turkey, possibly, are evidence of discrimination and harassment to which Alevi/Kurds are subjected; however, in the opinion of the Tribunal, such events do not cumulatively constitute persecution”.

[16] As explained by counsel for the applicants, these incidents included the following:

[TRANSLATION]

7. After his liberation, the applicant lived in constant fear, became depressed, believed he was being constantly watched and suffered from nightmares; the applicant had a great deal of difficulty resuming a normal life.

[17] The Court finds that the accumulation of these uncontradicted, repeated acts of discrimination and harassment, taken together and as a result of a multiplier effect, constitutes persecution by government authorities.

[18] On the basis of the cumulative effect, the Court finds that this was persecution within the meaning of the Convention, and, with age and the vulnerability that comes with the weakness of age, the dangers and risks to their persons are becoming increasingly serious (*Nejad v Canada (Minister of Citizenship and Immigration)*), [1997] FCJ no 1168).

[19] The Court also takes particular note of *Sagharichi v Canada (Minister of Employment and Immigration)* (1993), 182 NR 398 (FCA), in which the Federal Court of Appeal held that some mistreatment can be considered persecution on the basis of its seriousness (see also *Naikar v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 592 (QL/Lexis); *Iruthayanathar v Canada (Minister of Citizenship and Immigration)*, [2000] FCJ no 1097 (QL/Lexis); *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1994] 1 FC 589 (CA)). In *Porto v Canada (Minister of Employment and Immigration)*, [1993] FCJ no 881 (QL/Lexis), the Court held that the definition of “discrimination” was inadequate to cover conduct that included acts of violence and death threats:

[8] . . . The “discrimination” which it mentions should have been analyzed to determine whether the acts underlying it could constitute persecution. This is especially the case when we consider that the “discrimination” in question embraced acts of violence and death threats. At first sight, the word “discrimination” is a very inadequate description of the nature of the acts described by the applicant and which the Division had to examine.

[20] Paragraph 55 of the *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* states the following:

55. Where measures of discrimination are, in themselves, not of a serious character, they may nevertheless give rise to a reasonable fear of persecution if they produce, in the mind of the person concerned, a feeling of apprehension and insecurity as regards his future existence. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all the circumstances. A claim to fear of persecution will of course be stronger where a person has been the victim of a number of discriminatory measures of this type and where there is thus a cumulative element involved.

[21] Regarding objective documentation, according to the United States Department of State’s *2010 Country Reports on Human Rights Practices*: Turkey, April 8, 2011, Exhibit P-1:

Human rights organizations continued to report cases of torture and abuse in detention centers and prisons during the year. They alleged that torture and abuse

largely occurred outside of detention centers in more informal venues where it was harder to document. In its report for the year, Amnesty International (AI) noted that investigations into human rights violations by police were largely ineffective and that instances of bringing officials to justice were rare. The UN Committee against Torture (UNCAT) stated in its November report that it was “gravely concerned about numerous, ongoing, and consistent allegations concerning the use of torture, particularly in unofficial places of detention.”

The HRF reported that courts investigated allegations of abuse and torture by security forces during the year. However, they rarely convicted or punished offenders. Authorities typically allowed officers accused of abuse to remain on duty during their trials. UNCAT reported in November that it was “concerned at the continuing failure of authorities to conduct effective, prompt and independent investigations into allegations of torture and ill-treatment.”

[22] Therefore, this couple still has an objective fear with respect to future risk and mistreatment (see *Kuccuk v Canada (Minister of Citizenship and Immigration)*, 2012 FC 500, 408 FTR 225).

[23] Like in *Kuccuk*, above, the Court finds the following:

[22] It is clear from the evidence cited by the RPD that the applicant would be at risk if he returned to Turkey. The RPD’s finding is not supported by the documentary evidence cited by it.

...

[24] Upon reading the decision, it is obvious that the RPD failed to draw a link between the applicant’s subjective circumstances described in his testimony and the objective nature of the fear which was supported by the documentary evidence cited by the RPD. . . .

[24] Because the RPD did not question the credibility of the applicants’ testimony, the subjective evidence remains corroborated by the objective evidence.

[25] For all of these reasons, the application for judicial review is allowed, and the matter is referred back for redetermination by a differently constituted panel.

JUDGMENT

THE COURT ORDERS that the applicants' application for judicial review be allowed and that the matter be referred back for redetermination by a differently constituted panel. There is no question of general importance to be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Francie Gow, BLC, LLB

FEDERAL COURT
SOLICITORS OF RECORD

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