FEDERAL COURT OF AUSTRALIA

Duzdiker v Minister For Immigration & Multicultural Affairs [2000] FCA 390

IMMIGRATION – application for review of decision of Refugee Review Tribunal – whether Tribunal applied a mistaken meaning of "persecution" – degree of harm required to constitute persecution – course of selective harassment – whether relocation of the applicant would amount to an unreasonable denial of fundamental rights.

Migration Act 1968 (Cth), s 476(1)(e)

United National Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, Art 1(1)

Abdalla v Minister for Immigration and Multicultural Affairs (1998) 51 ALD 11, applied

Applicant A v Minister for Immigration and Ethnic Affairs (1998) 190 CLR 225, applied

Chan v Minister for Immigration and Ethnic Affairs (1989) 169 CLR 379, applied

Collector of Customs v Pozzolanic (1993) 43 FCR 280, applied

Minister for Immigration & Ethnic Affairs v Wu Shan Liang (1996) 185 CLR 259, applied

Montes-Granados v Minister for Immigration and Multicultural Affairs [2000] FCA 60, applied

Hathaway *The Law of Refugee Status* 1991

ALI DUZDIKER v MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

N 310 of 1999

MADGWICK J

31 MARCH 2000

SYDNEY

IN THE FEDERAL COURT OF AUSTRALIA	
NEW SOUTH WALES DISTRICT REGISTRY	N 310 OF 1999

BETWEEN:	ALI DUZDIKER APPLICANT
AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS RESPONDENT
JUDGE:	MADGWICK J
DATE OF ORDER:	31 MARCH 2000
WHERE MADE:	SYDNEY

THE COURT ORDERS THAT:

1. The application is dismissed.

2. The parties are to pay their own costs.

IN THE FEDERAL COURT OF AUSTRALIA	
NEW SOUTH WALES DISTRICT REGISTRY	N 310 OF 1999

BETWEEN:	ALI DUZDIKER APPLICANT
AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS RESPONDENT

JUDGE:	MADGWICK J
DATE:	31 MARCH 2000
PLACE:	SYDNEY

REASONS FOR JUDGMENT

HIS HONOUR:

1 Despite the initial attractions of the comprehensive and well-considered submissions of counsel for the applicant, I have come to the conclusion that the applicant's claim for relief in this Court must fail.

2 The applicant, Mr Ali Duzdiker, is a Turkish national who was born on 15 January 1964. He arrived in Australia on 15 January 1996 and his brother, Dervis Duzdiker, arrived on 23 March 1996. Together on 25 October 1996 they applied for protection visas. In February 1998 a delegate of the respondent refused their applications and they sought review of these decisions before the Refugee Review Tribunal ("the Tribunal"). On 16 March 1999 the Tribunal refused their applications. On 14 April 1999 they applied to this Court seeking judicial review of the Tribunal's decisions. The matters were heard consecutively (see *Duzdiker v Minister For Immigration And Multicultural Affairs* [2000] FCA 391).

Factual background

3 The applicant is an Alevi Muslim. Alevis (or Alawis) in Turkey are a stream of Shiite Islam. The Alevis constitute a religious minority amongst Turkish people, the majority of whom are Sunni Muslims. They seem to constitute between 15% and 30% of the population. The Alevis are generally under-privileged. Approximately one third of all Alevis in Turkey are also Kurdish and, according to cables issued by the Department of Foreign Affairs, Alevis are generally regarded to be "liberal in thought and practice and left leaning politically". The applicant's political allegiances are moderately to the left of centre.

4 As a general rule, Alevis can practice their religion freely. However they suffer from some discrimination. On occasions they have been the targets of extremist violence, usually emanating from the resurgent Sunni extremists. For example, in Sivas in 1993, during Alevi festivities, fundamentalist Sunnis burned down a hotel in which a popular Alevi satirist was staying; some 40 Alevis were killed and 145 injured. Another sporadic threat to Alevis is that posed by some right-wing police officers who see Alevis as being sympathetic to "leftist" elements. Turkey is, of course, hardly noted for civil libertarianism generally.

5 The applicant himself, with regard to treatment by the police, offered the view that: "we don't attach much importance to … little beatings or detentions for about an hour". Further he said before the Tribunal that:

"Applicant: Because I'm an [Alevi] and I have left-wing opinions and because my family is also involved in the events, I am scared to go back to Turkey. I'm scare of my own safety. I can go to Turkey, I could go anywhere in Turkey and I could settle there, but nobody can give a guarantee for my safety. I want to live like a human being. For the last three years and one month, I'm in Australia and no police officer has stopped me on the street and asked for my ID. They never ask for any Ids in a pub or in a club, for which produce an ID. It's possible that a thing like that does happen at least three times in one day.

Tribunal: Just on that point, is this something which the police do to any person who's in the street, anyone can be stopped?

Applicant: Of course. Anywhere and anytime they could ask for something."

6 The applicant's parents and two brothers live in Antakya, where he grew up. Antakya is a city of about 100,000 people close to the Syrian border and is in the South-Eastern part of Turkey (which remains under martial law due to the civil war with Kurdish insurgents). The applicant owns a shop there, operated by one of his brothers.

7 The applicant claimed to have suffered persecution predominantly at the hands of the Turkish authorities, however, the applicant's representative before the Tribunal maintained that fundamentalist Sunni Muslims were also "capable of being agents of persecution". The applicant asserted that he had been physically harassed and assaulted by the authorities because of his religious convictions and his participation in Alevi political activities. In particular he claimed that:

"(i) on 1 May 1984 while living in Antakya, he attended a May day celebration and afterwards he was arrested by the police, beaten, psychologically abused and questioned about his involvement in the demonstration;

(ii) as a result of this incident he was further harassed and eventually moved from Antakya to Istanbul in September 1985;

(iii) in Istanbul he continued to support Alevi organisations attending cultural events and participating in gatherings. He was harassed by the police;

(iv) he continued to attend May day celebrations and although never formally 'arrested' he was often detained by the police and beaten following his attendance;

(v) he was held up by the police and beaten after attending a 'left wing' concert in 1994 in Istanbul;

(vi) he returned to Antakya in June 1995 and attended a commemoration of the 'Sivas massacre' which was broken up violently by police; and

(vii) thereafter, he and his family were harassed which included the burning down of the family shop." (references omitted)

The Tribunal's decision

8 The Tribunal member had the advantage of a departmental interview with the applicant. The member accepted that in 1986 the applicant had sustained a very serious beating at the hands of police in Istanbul. Her major concerns were whether the applicant's apparently genuine fear of police persecution, for imputed political opinion and/or religion in the reasonably proximate future, was well-founded, and whether, in any case, the applicant could not reduce any chance of persecution to a remote one by relocating himself away from his home city of Antalya. The transcript confirms that she was careful to raise her major concerns with him.

9 In the section of her reasons for decision entitled "Findings and Reasons" the Tribunal member stated the rationale for her decision. Despite its length, it is worth setting this out, almost in full:

"The Tribunal has noted that **not every threat of harm or interference with a person's rights for a Convention reason constitutes "being persecuted". It is a matter of degree**. The independent evidence indicates that there have been occasional incidents, such as the tragic killings of Alevis at Sivas in 1993 and killings of Alevi Kurds in Istanbul in March 1995, in which Alevis are singled out for violent attack. The source of those two notorious attacks was **Sunni extremists**, whose **attitude to Alevis is neither representative of government policies towards Alevis nor of the views of the majority of the Turkish population. Events such as that at Sivas appear to be rare, and other violent incidents are not so common that they amount to a "course of selective harassment" of Alevis as a group. In general, the evidence indicates that Alevis suffer some government-sanctioned discriminatory treatment, and that attacks on them by Sunni fundamentalists are occasional. However I am satisfied, and so find, that that treatment does not represent so serious a violation of human rights of Alevis that it amounts to persecution of them as a group.**

The Tribunal has considered whether there may be particular circumstances in the case of the present applicant which may lead, nevertheless, to a real chance that he will be persecuted for a Convention reason if he returns to Turkey. In doing this I have taken the following into account:

- I accept that Mr Duzdiker was a member of the Alevi Cultural Association in Antakyauntil 1985, when he left for Istanbul. He never re-joined it.

- I accept that he was detained for a day by police, and beaten, on May Day in Antakya in 1984.

- I accept that he was seriously beaten and injured by the police in 1986 when they attacked a Kurdish new year celebration in Instanbul, at which he was a bystander. I also find highly plausible his claim that such treatment left him very fearful of the police. Given this fear, it is

also plausible that he was afraid to settle anywhere in case local police began to know and harass him.

- I accept that he attended May Day marches annually from 1985 to 1994 in Istanbul, that often police detained some marchers and that he was occasionally included among them. I accept that he was detained on these occasions for up to a day and beaten. I find that it was his perceived political opinion (as politically left of centre) that motivated this treatment by right wing police.

- His brother, Mr Dervis Duzdiker, claimed that police raided the family home in Antakya in 1992, but was unable to explain what prompted this raid to occur. The Applicant has not mentioned this raid in his own claims. However I accept that it occurred.

- …In my view it indicates that he did not consider there was any serious police interest in him in Antakya. This interpretation is consistent with his vague responses to questions on this subject during the Tribunal hearing. It is also consistent with the fact that the police did not come to the family home looking for him, nor ever attempt to detain him, after his return to Antakya in 1995, despite having his home address and even loitering around his shop.

- I accept that, after his return to Antakya, with many other Alevis in 1995 he attended a commemorative protest against the Sivas killings of 1993. Although he was not detained by the police, I consider it plausible that this demonstration may have motivated some right wing Sunni Moslems in Antakya to make threatening calls to his home, and to prompt some right wing police to behave in a threatening manner at the family shop. It is not implausible that the shop was burned down by some of these people. He claimed that other Alevis in Antakya were having similar problems in the months after the protest. That evidence suggests that the harassment, linked to a particular event, was likely to subside after a time. The evidence suggests that has occurred. His parents have returned to live in Antakya after visiting Australia, two of his brothers continue to live in Antakya, the shop which was damaged by fire has been refurbished and is now being run by one of those brothers, and Mr Duzdiker is unaware of any harassment of his parents or brothers related to their well-known connections with the Alevi Association. There is no evidence before the Tribunal to suggest that the Alevi Association has been closed down or that its other members are being seriously harassed for a Convention reason. Mr Dervis Duzdiker has claimed that his ex-wife is being seriously harassed by the police. However on that matter I have found that, if any such harassment is occurring, it is for non-Convention-related reasons, or reasons unrelated to the Applicant's brother, and it follows that those reasons are unrelated to the Applicant. For these reasons I am satisfied that the family is not suffering any significant detriment or disadvantage in Antakya as a result of their religion or political opinions.

…

Antakya police

I have found that the Applicant may have a subjective fear of persecution because of his experiences with the police in 1986, but must consider whether his fear is well-founded. That requires an assessment of the other evidence. I have accepted that the harassment of the Applicant in 1995 in Antakya was prompted by increased tensions after the commemoration of the 1993 deaths of Alevis in Sivas, and that local right wingers, both police and others, may have been responsible for the harassment of many Alevis in Antakya at that time. I have also found that these tensions have subsided. Noting his claims that his family members are all known locally as left wing Alevis, (that is, they are longstanding members of the Alevi Association and often attend May Day marches) I consider it significant that, according to the evidence, his parents and brothers are not suffering any form of significant detriment or disadvantage in Antakya. The reasons why the police may have questioned his father on two occasions about the Applicant's current activities are unclear. The Applicant has done nothing that would lead the police in Antakya to treat him more harshly than other family members. In fact so far as they are aware he has done less. As far as they know, twenty years ago he supported a centre-left political party (which was legalised in 1992 and now holds the balance of power in the Turkish parliament); he has not attended a May Day celebration for fifteen years; he was a member of the Alevi Association in Antakya until 1985; he was not heard from for ten years; and in 1995 he attended a Sivas commemoration ceremony. If anything, he is less likely than the brothers who remain in Antakya to be targeted by right wing police. He has not claimed they are being so targeted. For these reasons the Tribunal considers that the chance of the Applicant's being detained or harmed to a degree amounting to persecution if he returns to Antakya is remote. Nevertheless, given his subjective fear of harm there, I have considered whether he could relocate within Turkey.

Relocation within Turkey:

…

From 1985 to 1994 Mr Duzdiker moved from place to place around Istanbul to avoid the police, who he feared would target him if he settled down. I am not satisfied that, if he had settled down, he would have been the target of harassment serious enough to amount to persecution. During his last eight years in Istanbul, right wing police briefly detained and beat up at random individuals leaving "left wing" theatre performances, including Mr Duzdiker from time to time, but they released him after a few hours, showed no further interest in him, and never bothered to contact Antakya police about him. Those periods of detention, unjust as they were, were not so serious that they amounted, even cumulatively, to persecution. They were occasional and brief. I accept that, if Mr Duzdiker were to live in Istanbul or elsewhere, it is plausible that this is the type of treatment he may face from time to time if he attends similar cultural events. However, the ability to attend such performances is not so central to his political or religious beliefs that it would be a denial of a fundamental right if he could not attend them. There are legal Alevi organisations which he could join, and he could also join the political party of his choice. If he does so, in my view

the chance of his being detained and harmed, to a persecutory degree, for a Convention reason is remote.

Mr Duzdiker left Turkey from the airport in Istanbul in 1996 without being questioned or stopped. He used a passport in his own name. The evidence from DFAT is that security measures at that airport allow the authorities to identify individuals who are wanted by the police. He does not claim to have paid bribes to airport officials, and his ability to openly leave the country is, in my view, a further indication of the Turkish authorities' lack of interest in detaining him in 1996.

For the following reasons I find that it would not be unreasonable to expect the Applicant to relocate within Turkey if he wished to do so:

- There are large Alevi communities in other parts of the country in which he could settle.

- He lived in and around Istanbul for ten years, where he was able to work and live. His only contact with the police was occasional and occurred by chance.

- The chance that he will be persecuted because he is an Alevi, if he does not live in Antakya, is remote. Even if there were to be one of the occasional outbreaks of violence by Sunni right-wingers against Alevis, the chance is remote that the Applicant will find himself a victim of it.

- The Applicant has provided no convincing argument as to why he could not resettle elsewhere.

- The Applicant's past history with Antakya police is not known to the authorities outside Antakya. His own evidence is that the police do not contact their counterparts in the person's home town unless the matter is "serious". The evidence does not indicate that The Applicant plans to become involved in any activity sufficiently serious to prompt the Turkish police to contact Antakya police.

- The Applicant does not claim to hold strong political views, nor does the evidence suggest that he does. In his final two years in Turkey he was involved in no political activities of any kind. He never joined the CHP (the party with which he sympathised during the 1980s), despite the evidence, which he did not dispute, that it is legal and that its members are not harassed. At the hearing he stated that he would join this party if he could. The evidence suggests that, if he wished to express his political opinion, he could do so by joining that party, and the chance would be remote that he would face persecutory treatment for doing so.

For the above reasons the Tribunal finds it would not be unreasonable for the Applicant to relocate within Turkey, and that his fear of Convention-related persecution in that country is not well-founded."

The meaning of 'persecution'

10 The applicant claimed that the Tribunal member had misunderstood and misapplied the concept of persecution under the Convention in three different ways.

(i) The degree of harm required to constitute persecution

11 First, it was said that the Tribunal erred in law by holding that the detention of the applicant and the physical assaults visited upon him, which it had affirmed in fact, did not constitute such a serious interference with his human rights so as to amount to persecution. The applicant argued that the Tribunal's treatment of the material indicated that it had adopted a meaning of persecution that was unduly narrow. The meaning of "persecution" under the Convention is a legal question, and it is, therefore, permissible for this Court to assess whether the Tribunal applied an erroneous standard.

12 The Tribunal member had incorporated in her decision, by way of introduction, a summary of the relevant law. This acknowledges that persecution requires "some serious punishment or penalty or some significant detriment or disadvantage" (per Mason CJ in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 at 388), but also that "it may include single acts of oppression, serious violations of human rights, and measures 'in disregard' of human dignity". Under the heading "Findings and Reasons", as appears above, the Tribunal indicated, correctly, that it is a "matter of degree" whether harm or interference with rights constitutes "being persecuted" (the phrase in the Convention definition). It is not readily to be thought that the Tribunal member failed to apply her own legal directions to herself.

13 In the context of explaining her view that relocation from Antakya would be a reasonable option for the applicant, the Tribunal member expressed the conclusion that, if the applicant had settled down in Istanbul, she was not satisfied that "he would have been the target of harassment serious enough to amount to persecution." She explained this conclusion by saying that the police had, from time to time, briefly detained the applicant and beaten him up, that he was selected "at random" as an individual "leaving 'left wing' theatre performances", and that "[t]hose periods of detention, unjust as they were, were not so serious that they amounted, even cumulatively, to persecution. They were occasional and brief."

14 In the first place, I think it quite strained to suggest, as the applicant does, that the reference to "periods of detention" indicated that the member had overlooked the beatings that occurred during the detention to which she had just referred. In fact the supposed offending paragraph begins with an acknowledgment by the Tribunal that the applicant was beaten by police. It is implausible that the member did not consider this to be relevant to her consideration of persecution. A beneficial construction of the Tribunal's reasons is to be preferred: see *Collector of Customs v Pozzolanic* (1993) 43 FCR 280 at 287 and *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259 at 272.

15 However, the passage does in my opinion invite legal questioning. To be subjected to battery capable of being described as being "beaten up" from time to time by officers of the State for a political opinion, imputed from merely assembling to receive entertainment expressive of certain political sentiments, surely at least comes very close to being "persecuted". While no doubt falling short of the more appalling forms of torture which the Turkish police are often accused of employing, such treatment would flaunt the international norms. For example, the *United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984* to which Australia is a signatory, defines, under Art 1(1), torture in the following way:

"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

16 Further, a real question arises whether the Tribunal member failed to apply the tests that she correctly recognised in her own self-direction: "serious punishment", "some significant detriment", "acts of oppression", "serious violations of human rights" and "measures in disregard of human dignity". In *Applicant A v Minister for Immigration and Ethnic Affairs* (1998) 190 CLR 225, at 232, Brennan CJ referred to "the security of the person" as a "fundamental human right" (see also Dawson J at 244). Indeed, the maltreatment arguably constitutes a "prima facie" act of persecution: *Chan* per Mason CJ at 390. This may be a case in which, despite stating and purporting to apply the correct test, error on the part of the Tribunal may be inferred from the result reached: see *Avon Downs v Federal Commissioner of Taxation* (1999) 78 CLR 353 at 360 per Dixon J, and *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 162 ALR 577 at 607 per Gummow J. Such an error may undermine the jurisdiction of the Tribunal and thus lead to reviewable error under s 476(1)(b).

17 However, there are things to be said to the contrary of this view, and as will appear, this need not be considered to finality. I am prepared to proceed on the assumption that the Tribunal member's reasoning on this point involves legal error.

18 The Tribunal Member in any case regarded such past and potential future maltreatment of the applicant by police as relevant to the reasonableness of the applicant's relocating from Antakya. Implicitly, indeed, she regarded such maltreatment as tending against such reasonableness, for she continued:

"I accept that, if Mr Duzdiker were to live in Istanbul or elsewhere, **it is plausible that this is the type of treatment he may face from time to time if he attends similar cultural events**. However, the ability to attend such performances is not so central

to his political or religious beliefs that it would be a denial of a fundamental right if he could not attend them. There are legal Alevi organisations which he could join, and he could also join the political party of his choice. If he does so, in my view the chance of his being detained and harmed, to a persecutory degree, for a Convention reason is remote."

19 It seems to me that, even assuming error in the categorisation of the police maltreatment as something less severe than persecution, the Tribunal Member's suggestion that, in effect, the imputation of the political opinion might reasonably be avoided, remains valid. It is, of course, no answer to a claim that one fears persecution for one's beliefs, as demonstrated by activities that the beliefs actually *require*, to say that one could avoid the persecution if one ceased the activities. But there are questions of degree involved here. The Convention exists to vindicate some fundamental human rights. That of political conscience is one of them. Political conscience, like religious conscience, may dictate certain actions or observances, it may encourage others or it may merely sanction as options yet others. The applicant's political beliefs seem to have fallen comfortably enough into the range of those championed by a legal centre-left party. The degree of urgency of his beliefs may be judged by his relatively low level of political activity of any kind, including not being a member of that party. It seems unlikely that it would be a serious affront to his essential beliefs if he were unable to attend certain theatrical performances. The detraction from human dignity might reasonably be regarded, in the context of whether persecution is involved, as relatively minor.

20 In taking and shortly expressing such a view, it seems to me that the Member at least did not fall into any legal error. Nor can it be said that the Tribunal, in fastening on that matter for discussion, overlooked the requirement that consideration of relocation must be made in light of all matters relevant to the particular applicant's circumstances (see discussion from para [31]).

(ii) "Persecution: course of selective harassment"

21 It was submitted by the applicant that the Tribunal erred by referring to the violent incidents that Alevis had endured as being "not so common that they amount to a 'course of selective harassment'".

22 As counsel for the respondent pointed out, the phrase "course of selective harassment" seems to have been taken from the judgment of Mason CJ in *Chan* at 388. It occurs however in a paragraph in which Mason CJ was pointing out that "some forms of selective or discriminatory treatment" of citizens by the State do not amount to persecution, and that some reasonably serious harm will be necessary. What his Honour said was:

"Obviously harm or the threat of harm as part of a course of selective harassment of a person, whether individually or as a member of a group subjected to such harassment by reason of membership of the group, amounts to persecution if done for a Convention reason. The denial of fundamental rights or freedoms otherwise

enjoyed by nationals of the country concerned may constitute such harm, although I would not wish to express an opinion on the question whether any deprivation of a freedom traditionally guaranteed in a democratic society would constitute persecution if undertaken for a Convention reason."

His Honour was focussing attention, not on a requirement of temporal continuance of harassment of a person, as an individual or group member, but on the necessity for some systematic quality in the conduct of the putative oppressor. When McHugh J, in the same case (at 430), used the similar phraseology, "harm … as part of a course of systematic conduct", it is clear that he did so precisely to explain why "[a] single act of oppression may suffice." Although in a different context, a Full Court of this Court captured the essential notion in *Abdalla v Minister for Immigration& Multicultural Affairs* (1998) 51 ALD 11. The Court said, at 20, that:

"Clearly 'persecution' involves more than a random act. To amount to 'persecution' there must be a form of **selective** harassment of an individual or of a group of which the individual is a member. One act of **selective** harassment may be sufficient." (emphasis original)

> 23 The respondent argued, among other things, that the Tribunal's use of the words "course of selective harassment" amounted to no more than an evidentiary conclusion rather than the expression of a legal criterion. In other words, it was submitted that the Tribunal did not find that it was *because* there had not been a course of harassment that the applicant had not been persecuted. Rather, the respondent suggested that the statement was no more than a bare factual finding. This explanation is however unpersuasive. The explicit reference to the phrase "course of selective harassment" as a quotation, presumably attributable to Mason CJ,makes it likely that the phrase was regarded by the Tribunal member as legally determinative, rather than merely being an apt summation of the evidence.
>
> 24 The truth, in my opinion, is that the paragraph does show some confusion of legal concepts. The member found that, within three years, there had been two incidents in which Alevis were singled out for very violent attacks by Sunni extremists. The comparative rarity of such events could hardly deny the systematic singling out of Alevis by the extremists. Hence the reference to a denial of a "course of selective harassment" was misplaced, as was the denial, which shortly followed, of the comparative seriousness of the violation of "human rights of Alevis".
>
> 25 However, it is clear that, in the paragraph in question, the Tribunal Member was dealing with other matters as well. It is necessary to understand what those other matters were, if they can be tolerably safely determined. So much is part of the requisite, charitable approach to the reading of such a decision: *Pozzolanic* and *Wu Shan Liang*.
>
> 26 In the paragraph in question, the Tribunal Member was evidently concerned to do two things. The first was to deny that the Turkish government was itself the agent of any such degree of maltreatment of Alevis that could reasonably be called persecution. There seems to have been material to

support this conclusion. As well, the Tribunal Member was stressing the lack of frequency of the attacks by Sunni extremists on Alevis. That lack of frequency (three times it was mentioned) is of importance to an issue that the member had to consider, namely the likelihood that the applicant, as an Alevi in Turkey, would be caught up in such an attack. I think the paragraph can, without unfairness, be regarded as expressing, albeit with a confusion of legal concepts, the conclusion that the frequency of private Sunni attacks on Alevis is sufficiently uncommon that there is less than a reasonable chance that the applicant would be so persecuted. Again, there is material that would tend to support that conclusion. Hence, such legal errors as occurred are not, in my opinion, material to the Tribunal's decision.

(iii) Persecution by third parties

27 It was also submitted that the Tribunal failed to consider the threat posed by Sunni extremists because it considered that such threats were not government-sanctioned. The applicant focussed on the Tribunal's statement, in the passage just considered, that: "In general, the evidence indicates that Alevis suffer some government sanctioned discriminatory treatment, and attacks on them by Sunni fundamentalists are occasional." However, on a beneficial reading of the Tribunal's reasons, it is, as I hope I have already made clear, not apparent that the Tribunal failed to consider "third party" persecution. The Tribunal made reference to attacks by "local right wingers" and "right wing Sunni Moslems". It is not plausible that the Tribunal excluded these forms of attack from her consideration without expressly saying so.

Relocation and denial of fundamental rights

28 It was finally submitted (as earlier indicated) that the Tribunal fell into error of law by asserting that the applicant could avoid harm by relocating to Istanbul if he ceased his attendance at Alevi cultural events and that this was not a denial of his fundamental rights.

29 In *Randawa v Minister for Immigration, Local Government & Ethnic Affairs* 52 FCR 437 at 442 – 443 Black CJ held that the appropriate test to be applied in cases regarding relocation was not merely whether by relocating the applicant could avoid persecution, but also whether an applicant could reasonably be expected to do so. Professor Hathaway in *The Law of Refugee Status* 1991 explained the test, at 134, in these terms:

"The logic of the internal protection principle must, however, be recognised to flow from the absence of a need for asylum abroad. It should be restricted in its application for persons who can genuinely access domestic protection, and for whom the reality of protection is meaningful. In situations where, for example, financial, logistical, or other barriers prevent the claimant from reaching internal safety; where the quality of internal protection fails to meet basic norms of civil, political, and social-economic human rights; or where internal safety is otherwise illusory or unpredictable, state accountability for the harm is established and refugee status is appropriately recognized."

30 The applicant argued that the Tribunal had failed to consider whether it was reasonable for the applicant to cease his attendance of Alevi cultural events. While it was conceded that the applicant's involvement in these activities was at a relatively low level, it was clear that he was committed to the continuation of such involvement.

31 However, in its reasons the Tribunal stated the correct test for relocation and did consider whether relocation was a reasonable option in the applicant's circumstances. The Tribunal Member concluded that it was. One of the factors considered was the extent of any hardship involved in ceasing such attendances. The Tribunal did not fail to consider this matter as bearing upon the overall judgment of reasonableness.

Costs

32 It seems to me right to make no order as to costs. It was accepted, in substance, that the applicant had a genuine fear of persecution for a Convention reason. The question was whether it was well-founded. The Tribunal's reasons were attended by some legal error although, in the end, the errors do not seem to me to effect the ultimate decision. The kinds of considerations referred to by Burchett J in *Montes-Granados v Minister for Immigration and Multicultural Affairs* [2000] FCA 60, seem to me to be apposite here.

Disposition

33 For the above reasons the application is refused.

I certify that the preceding thirty-three (33) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Madgwick.

Associate:

Dated: 31 March 2000

Counsel for the Applicant: R Beech-Jones

Solicitor for the Applicant:	Justin McDonell & Co
Counsel for the Respondent:	J Smith
Solicitor for the Respondent:	Australian Government Solicitor
Date of Hearing:	9 July 1999
Date of Judgment:	31 March 2000