CUREDI013UK017

Question(s) at stake:

Whether the claimant, who was a Turkish woman facing a non-consensual arranged marriage, and who feared persecution at the hands of their family on their discovery that she had breached social norms mandating pre-marital virginity, was, therefore, qualified for protection under the Refugee Convention.

Outcome of the ruling:

The claimant did not qualify for protection under the Refugee Convention. While she would face discrimination in Turkey, she was not seen as threatened with persecution in that country, due to significant changes in local law, and due to the fact that the Turkish authorities can and do offer protection to women in the kind of situation faced by the claimant.

Topic(s):

- Immigration and Asylum

Keywords:

- Forced marriage
- Grounds/Reasons of persecution
- Membership of a particular social group
- Refugee status
- Asylum seeker
- Gender based persecution
- Arranged marriage

Tag(s):

- Honour persecution

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Country:

United Kingdom

Official citation:

SSHD v YK (PSG - Women) Turkey CG [2002] UKIAT 05491

Link to the decision:

https://tribunalsdecisions.service.gov.uk/utiac/2002-ukiat-5491

ECLI:

No ECLI number / ECLI number unknown

Date:

28 October 2002

Jurisdiction / Court / Chamber:

Immigration Appeal Tribunal

Remedy / Procedural stage:

Appeal from the adjudicator

Previous stages:

- Adjudicator (appeal allowed – 22 April 2002)
- Secretary of State (asylum applications refused – date of decision unknown)

Subsequent stages:

No information found.

Branches / Areas of law:

Administrative law; Asylum law

Facts:

- Ms Kircicek, the claimant, “is a Turkish citizen […] born on 7 June 1977”. (para. 2) On 26 March 2000, she “arrived in the United Kingdom” with “an au pair visa valid” until 26 March 2002. On 21 March 2002, she entered an application for asylum. (ibid.)
- In her asylum claim, the claimant argued that she feared persecution at the hands of her father, the man she would be forced to marry, and the latter’s family. (para. 3) Not only, she claimed, had her marriage been arranged without her consent (ibid.), but she had also committed a grave breach of societal norms by failing to remain a virgin prior to marriage, something which would “become known” subsequent to her being forcibly married. (para. 15)
- It is noteworthy that the term “forced marriage” is not used in the decision. This would, however, have been the correct terminology to employ, given that a forced marriage is one entered into against the will of one or both of the parties to it. In the case of an “arranged marriage”, by contrast, there is no assumption that those so married are doing so against their will, or without their consent.
- The Secretary of State (SSHD) refused the claimant’s asylum application, leading her to appeal to the adjudicator, who allowed the appeal. The claimant was found, by the adjudicator, to have a well-founded fear of persecution wherever she might go in Turkey. This was due to her being a member of a particular social group, that of those “[w]omen in Turkey who have transgressed social norms and are accused of having bought dishonour and shame upon their families”. (para. 4)

- In appealing against the adjudicator's decision, the SSHD argued that women in Turkey do not, in fact, form a particular social group: "By defining the social group as 'women in Turkey who have transgressed social norms and are accused of having brought dishonour and shame upon their families' it is not clear that the group can exist independently of the persecution. The only two sources of her fear are from her father and from her intended husband. They would not wish to persecute anyone else who might fall within the Adjudicator's definition of the group." (para. 7) Additionally, argued the SSHD, laws in contemporary Turkey do not actively discriminate against women. (para. 4)
- The SSHD asked the Immigration Appeal Tribunal to find that, in the case of Turkey, it was no longer accurate to state that women were "discriminated against", and that "they are not unprotected by the" Turkish state, even if they may continue to face acts of discrimination. (ibid.)

Ruling:

The decision of the First Tier Immigration Tribunal was reversed by the Upper Tribunal in *SSHD v YK (PSG - Women) Turkey*. The Upper Tribunal ruled that, on the basis of the evidence submitted to it, "the authorities in Turkey are both willing and able to offer protection to unfortunate young women in the claimant's situation." (para. 20) The claimant, therefore, was not a person entitled to protection under the Refugee Convention.

The Upper Tribunal ruled, further, that the evidence demonstrated that, where cases arise in which Turkish women need protection from the authorities, "the authorities do act to offer protection where it is sought". (ibid.) Such protection might take the form of "witness protection programmes, which would ensure that such a person would be given a new identity and sent to a secret location in Turkey". (ibid.) It was also the case, documents showed, that in Turkey the "State do[es] punish those involved in 'honour killings'". (ibid.) Importantly, it added, recent changes to the law "make spousal abuse illegal and now acknowledge the equal roles of both men and women in the management of the marriage and

household." (ibid.)

The adjudicator had relied on the decision of *Islam (AP) v Secretary of State for the Home Department Regina v Immigration Appeal Tribunal and Another Ex Parte Shah (AP) (Conjoined Appeals).* (para. 21) The Immigration Appeal Tribunal reasoned that this decision was not applicable in the present case. In *Shah and Islam*, the House of Lords said: "Women in Pakistan are members of a particular social group. They all share the immutable characteristics of gender and are discriminated against by the society in which they live and as a group are unprotected by the State". (Ibid.)

The Upper Tribunal determined that, on the basis of evidence of the country conditions in Turkey, the same could not "be said of women in Turkey". While women in that country might still suffer from some forms of discrimination, the Turkish state still acted to protect them. (ibid.)

Main quotations on cultural or religious diversity:

- "That suggests that the State do punish those involved in "honour killings". The extracts from the US State Department report clearly show that the government sponsor shelters and consultation centres for battered women. Changes in the law recently introduced make spousal abuse illegal and now acknowledge the equal roles of both men and women in the management of the marriage and household." (para. 20)
- "The same cannot, however, be said of women in Turkey. Whilst undoubtedly they still suffer acts of discrimination, they can no longer be said to be discriminated against by the law and, we find, they are not unprotected by the State. We do not find that societal discrimination against women is either condoned or sanctioned by the State in Turkey. There is clear evidence to the contrary in the claimant's bundle which, we note, was before the Adjudicator." (para. 21)

Main legal texts quoted in the decision:

- Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)
- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)

Cases cited in the decision:

- *Islam (AP) v Secretary of State for the Home Department Regina v Immigration Appeal Tribunal and Another Ex Parte Shah (AP) (Conjoined Appeals)* [1997] Imm AR 145

Commentary

SSHD v YK (PSG - Women) Turkey CG [2002] UKIAT 05491: Forced Marriage in Turkey and the 1951 Convention

SSHD v YK (PSG - Women) Turkey CG [2002] UKIAT 05491 may provide a useful guide in cases where Turkish women make claims for asylum in the UK on the grounds of forced marriage and honour killings. That case, however, should be read together with both the Forced Marriage Act (Civil Protection) Act 2007 and the relevant UNHCR guidelines. Those guidelines, and the 2007 Act were adopted after *SSHD v UK (PSG – Women) Turkey*, as explained below.

A person's self-determination is intimately connected to their freedom to marry a person of their own choosing. As such, that freedom is recognized by a number of international legal instruments, including: Article 16(2) of the Universal Declaration of Human Rights; Article 23(3) of the International Covenant on Civil and Political Rights; Article 1(1) of the Convention on Consent to Marriage; Article 10(1) of the International Covenant on Economic, Social and Cultural Rights; Article 16(1)(b) of the Convention on the Elimination of all Forms of Discrimination against Women. (Dauvergne and Millibank 2010: 59).

Forced marriage is, in addition, dealt with by the UNHCR, in its 2002 Gender Guidelines (section 36(vii)), and its 2008 Guidance Note on Sexual Orientation (sections 13, 27, 28), which refer to forced marriage as a form of persecution

inflicted by the state and/or private actors.

Some countries have adopted legislation prohibiting forced marriage, while mandating the prosecution and punishment of individuals who arrange or who are complicit in arranging such marriages. In the UK, civil remedies to protect persons at risk of forced marriage have existed since 2008, with the coming into force, in that year, of the Forced Marriage (Civil Protection) Act of 2007

It appears, however, that these standards have not been incorporated in UK asylum decisions concerned with whether or not those facing forced marriage are entitled to refugee status (Dauvergne and Millibank 2010: 68). Asylum decisions tend to devote most of their attention to the specific issue of “force”, neglecting related, and relevant, issues such as coercion, duress, cultural pressure, or meaningful consent, in spite of the fact that UK domestic law does deal with these issues where the context of forced marriage is relevant. ((Dauvergne and Millibank 2010: 76)

The case of *YK*, where the Immigration Appeal Tribunal granted an appeal by SSHD, and in so doing overturned the finding that “women in Turkey” constituted a particular social group, is representative of such attitudes. The Immigration Appeal Tribunal acknowledged the landmark status of *Shah & Islam [1999] UKHL 20, the case* which recognized women in Pakistan as members of a particular social group under the Refugee Convention, due to the fact that all women in that country “share the immutable characteristics of gender and are discriminated against by the society in which they live and as a group are unprotected by the State.” (para. 47) The Immigration Appeal Tribunal reached its conclusion on the basis that although the claimant had argued that the Turkish authorities would fail to protect her, she had not provided sufficient evidence to substantiate this claim. By contrast, country conditions documents submitted by SSHD showed that the Turkish authorities can issue, and have issued, restraining orders against husbands, that they have also set up a number of government-sponsored shelters and consultation centres, and have declared a zero-tolerance policy towards honour killings. (paras. 8, 9) Although single women in Turkey may face some discrimination, this was not such as would reach the threshold required for

international protection. (para. 12)

Regarding the question of internal relocation, the claimant had also failed to provide evidence of people who acquire new residential addresses being obliged to register those addresses with the authorities, nor of the authorities subsequently sharing such information with abusive or threatening family members. (para. 11)

Therefore, it seems clear that a major problem with the claimant's case lay in it's not being supported by specific or expert evidence addressing the consequences of failing to marry the person chosen by her family, or of wider social and cultural attitudes, which effectively negate or violate a person's right to marry freely, and also their right to respect for private life. Asylum claims are fact sensitive, and must be determined on the basis of the facts and evidence in each individual situation: where cultural mores and traditional practices are relevant to such claims due to their being harmful and (in some cases) reaching the threshold of persecution, background evidence is needed to support such claims. Where relevant, a country (or medical) expert should be instructed.

The impact of *YK* has been primarily limited to Turkish cases dealing with forced marriage. In cases of forced marriage, the Immigration Appeal Tribunal has been, generally taken the approach of regarding appellants from Pakistan (*Shah v Islam*) as different from applicants originating from other countries, and to treat them accordingly. In other words, the tendency has been to avoid considering womanhood, prevalence of domestic violence, and subjection to forced marriage as identifying characteristics of a particular social group, depending on the countries of origin of female applicants and the degree (if any) of state protection available to them there.

One of the few cases where a rights-based approach towards forced marriage claims was adopted was that of *NS (Social Group – Women – Forced Marriage) Afghanistan CG* [2004] UKAIT 00328. In this case, the Immigration Appeal Tribunal ruled that lone Afghan women could be considered a particular social group. Additionally, in 2005, the Immigration Appeal Tribunal noted "from experience

that such cases often appear to become bogged down in pedantic, and often unnecessary, argument as to definition of the particular social group". *TB (PSG Women) Iran* [2005] UKIAT 00065 [66] (Dauvergne and Millibank 2010: 72). In this case, the Immigration Appeal Tribunal "took the unusual step of itself formulating the group ('Young Iranian Women who refuse to enter into arranged marriages'), ruling that this group was defined by its non-conformity rather than the persecutory outcome which followed" (Dauvergne and Millibank 2010: 72; *B (Iran)* [2005] UKIAT 00065 (9 March 2005) [57]). Therefore, where the assessment of group membership was concerned, this decision widened the scope of protection by focusing on resistance to persecution or non-conformity with societal expectations, rather than on the actual experience of persecution itself.

On the other hand, in the case of *FB (Sierra Leone)* [2008] UKAIT 00090, although the Immigration Appeal Tribunal ruled that a woman opposing Female Genital Mutilation (FGM) and forced marriage was eligible for protection based on "resistance to accepting the prevailing cultural norms in her own rural society", it mainly relied on the issue of FGM, addressing the issue of forced marriage only briefly. Additionally, it rejected, and did not accept, the view that such a refusal to conform with societal mores could be considered as falling within "the political opinion ground of the Refugee Convention". (Dauvergne and Millibank 2010: 73; (Clayton and Firth 2018: 476)

To conclude: UK case law on forced marriage as a form of gender-based persecution demonstrates the serious challenges facing women who have to establish a need for international protection (Clayton and Firth 2018: 475- 76). It is possible, however, that these cases might have enjoyed greater chances of success had they been better documented.

Literature related to the main issue(s) at stake:

Legal instruments relevant for forced marriage cases:

- Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (entered into force 9 December 1964), 521 UNTS.

231.

- Council Directive 204/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or persons who otherwise need international protection and the content of protection guaranteed [2004] L 304/12.
- Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (entered into force on 1 August 2014) CETS No. 210 (Istanbul Convention) art 37.
- Parliamentary Assembly, Forced Marriages and Child Marriages, Council of Europe, RES 1468 (2005).
- Universal Declaration of Human Rights (proclaimed by United Nations General Assembly Resolution 217A (III) on 10 December 1948) art 16.

Policy and legal documents in the UK:

- Forced Marriage (Civil Protection) Act 2007.
- The Anti-social Behaviour, Crime and Policing Act 2014.

UNHCR documents:

- UNHCR. 2002. *Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees*. HCR/GIP/02/01.
- UNHCR. 2008. *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity.*

Literature:

- Clayton, Gina and Firth, Georgina. 2018. *Immigration and Asylum Law*. Oxford: Oxford University Press.
- Dauvergne, Catherine and Jenni Millbank. 2010. “Forced Marriage as a Harm in Domestic and International Law”. *Modern Law Review* 73 (1): 57–88.
- European Union Agency for Fundamental Rights. 2014. *Addressing Forced Marriage in the EU: Legal Provisions and Promising Practices.* Luxembourg:

Publications Office of the European Union.

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