

PRESS SUMMARY

KD (Turkey) v Secretary of State for the Home Department [2026] EWCA Civ 349

On appeal from The Upper Tribunal (Immigration and Asylum Chamber)

LORD JUSTICES: Lord Justice Peter Jackson, Lord Justice Arnold, Lord Justice Dove

BACKGROUND TO THE APPEAL

KD is a citizen of Turkey who, together with his wife, arrived clandestinely in the UK on 19 August 2001. His first asylum claim, partly based on asserted fear of persecution for political activity, was refused on 2 October 2001. His appeal to an Adjudicator was dismissed in September 2004, with his accounts of his political activity, detention and ill-treatment being rejected as fraudulent. He did not leave the UK after exhausting his appeal rights.

In December 2005, KD murdered his wife. He was convicted in December 2007 and sentenced to a minimum term of 12 years imprisonment. Having been notified by the Secretary of State in December 2016 that he was liable to be deported upon his release, he made a fresh asylum and human rights claim repeating his original political persecution claim and adding that returning to his home country would breach his human rights due to an alleged blood feud arising from the murder.

In January 2019, the Secretary of State refused KD's asylum and human rights claims, certifying that he was a danger to the community and that his deportation was conducive to the public good. He was served with notice of a decision to make a deportation order. KD appealed on asylum and human rights grounds. In December 2022, after a hearing at which further evidence, including additional witnesses and an arrest warrant was considered, the First-tier Tribunal allowed the appeal on asylum grounds. It found that KD had rebutted the statutory presumption of dangerousness, that he would be at risk of persecution on account of his political opinions, and that a blood feud would put him at risk if he were returned to Turkey. An appeal by the Secretary of State to the Upper Tribunal was dismissed in June 2024. The Secretary of State appealed to the Court of Appeal on the grounds of procedural impropriety by the UT, flaws in FtT approach to section 72, misdirection by the FtT on the guidelines for handling fresh claims following failed appeals, and flaws in the FtT's approach to the arrest warrant.

JUDGMENT

The Court of Appeal unanimously allows the appeal.

REASONS FOR THE JUDGMENT

There was an unacceptable delay in the delivery of the UT's decision. The decision then given was short and the FtT decision gains no support from it. However, the real question concerns the decision of the FtT [32-33].

The FtT's finding that KD successfully rebutted the presumption of dangerousness is set aside [46]. An assessment of dangerousness requires a consideration of the nature of the crime, the likelihood of further serious offending, and the level of harm that might result [47]. While the FtT's approach did consider these factors, its assessment was diluted by weight given to other matters such as KD only having committed one offence and did not give adequate weight to the consequences of any reoffending were extremely serious and that there was still a real risk of repetition. The FtT did not depart from the assessments that he remained a "medium risk of serious harm to intimate partners", with a "low likelihood of serious harm to everyone else". However, it undercut them by noting that the risk assessment in respect of intimate partners had been reduced from high to medium [48]. Members of the community should not be expected to tolerate a real likelihood of serious harm from individuals who qualify for deportation, and in this context a low likelihood of serious harm is a real likelihood [49]. KD would have had to show that the likelihood of future serious offending was so low that it could effectively be discounted [51]. The s.72 presumption has not been displaced and that KD is therefore not eligible for the protection of the Refugee Convention [52].

The FtT made errors in its treatment of the 2004 decision. The guidance in *Devaseelan* requires the first determination to be treated as the starting-point, but the FtT did not do this effectively. Nor did it consider whether the facts now relied upon were materially different. The new evidence did not give rise to materially different facts and therefore the FtT should have treated the 2004 decision as an authoritative assessment of KD's political activity. It should have attached weight to the fact that KD's original claim failed because he was found to lack credibility. It did not approach the further witness evidence with the greatest circumspection nor did it approach evidence of other witnesses with caution. It gave no consideration as to whether there was any very good reason that witness evidence now given was not given in 2004. It did not consider whether there was any very good reason for the 2001 arrest warrant not having been produced in 2004, or why it should now be treated as being reliable evidence [67]. The UT did not correct these errors.

The FtT's finding that there was a blood feud is not preserved and the matter of the existence of a blood feud and the availability of internal relocation on return should be considered afresh [74].

That claim is remitted to the UT for expedited consideration [73].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments/>