



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04372/2018

THE IMMIGRATION ACTS

Heard at Field House
by Microsoft Teams
On 6 August 2021

Decision & Reasons Promulgated
On 12 August 2021

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

E K (TURKEY)
[ANONYMITY ORDER MADE]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Sophie Panagiotopoulou of Counsel, instructed by Montague Solicitors LLP

For the respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of E K who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 15 March 2018 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds.
2. The human rights claim is limited to Article 3 ECHR only: the appellant makes no Article 8 ECHR claim in these proceedings.
3. The respondent accepts that the appellant is a citizen of Turkey and is a Kurd from the south east of the country. She also accepted that in his evidence he showed a level of knowledge of the People's Democratic Party (Halkların Demokratik Partisi, hereafter 'HDP'), but she rejected this part of his account as vague and inconsistent.
4. The decision to set aside the First-tier Judge's decision also preserved a finding that the appellant is a military service evader.
5. **Mode of hearing.** The hearing today was a hybrid: Ms Panagiotopoulou and Ms Everett appeared remotely by Microsoft Teams. The appellant attended in person and gave his evidence through a Kurdish interpreter. Both the appellant and interpreter confirmed that they were able to understand each other.
6. There were no technical difficulties with the remote part of the hearing, save that Ms Everett had some sound problems which were resolved by turning off her camera for part of the hearing. I am satisfied that all parties were in a quiet and private place and that the hearing was completed fairly, with the cooperation of both representatives.
7. **Vulnerable appellant.** The appellant is a vulnerable person and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. At the beginning of the hearing, I asked both him and his representative what would be necessary by way of adjustment. Ms Panagiotopoulou had no instructions on the point, and there was no assistance in the expert medical evidence. The appellant said that he would like a glass of water.
8. I noted from the papers that the appellant had experienced panic attacks both during the asylum interview and the First-tier Tribunal hearing. I told him that if he felt that this was likely to happen, or he felt uncomfortable, I would rise to allow him to compose himself. I emphasised that the purpose of providing an interpreter, and of making vulnerability adjustments for his oral evidence was to enable him to give the best evidence to the Tribunal.
9. The appellant did not have any panic attacks or require any further adjustment during his oral evidence, or indeed, during the hearing. At the end of his evidence, I asked the appellant whether he felt comfortable, and whether he had been able to

give his best evidence, and he confirmed that he had. I asked him again at the end of the hearing if he was still feeling all right and he confirmed that he was.

Background

10. The appellant comes from a small village near Elbistan in south-east Turkey in April 1997 and is now 24 years old. His account is that between 2014-2015, he suffered attacks from non-state agents, Sunni Muslims and Christians, because he was wearing a waistcoat with the HDP logo.
11. On 1 November 2014, the Turkish authorities arrested him for distributing propaganda, and he was detained for three days and ill-treated. On his release, the appellant took no further part in HDP activities until 2016, a period of two years.
12. In July 2017, the Turkish authorities arrested the appellant at night from his home, releasing him after two days' detention, on condition that he provided information every week to the police regarding HDP activities. He was tortured during that detention and has scars from it.
13. The appellant gave incorrect information on HDP to the police 5 times, and then fled Turkey on 27 August 2017, arriving at Stansted Airport on 28 August 2017. His father made the arrangements and the appellant does not know how much it cost. The appellant travelled on a passport to which he was not entitled, which was not in his own name. He applied for asylum on arrival.
14. The appellant took part in an HDP demonstration in London on 4 December 2018, against the conflict in Afrin.
15. If returned, the appellant fears further arrest and ill-treatment by the Turkish authorities, and also attacks from Sunni Muslims and Christians, if they find out that he supports the HDP.

First-tier Tribunal decision

16. The First-tier Judge dismissed the appeal. He found that the appellant had attended only one HDP demonstration, on 4 December 2019 (so post-decision), which he considered was an isolated incident designed to embellish the appellant's claim, by manufacturing evidence a fortnight before the First-tier Tribunal hearing. Nor did the judge find it 'plausible that the appellant's presence at that demonstration would have come to the notice of the authorities in Turkey'. He did not consider that the demonstration was likely to give rise to a risk on return.
17. The appellant has some body scars. The First-tier Judge, apparently with the agreement of the appellant's representative, dismissed Dr J Hajioff's medical evidence regarding the scarring on the appellant's body, and placed no weight thereon. He rejected the core account in its entirety, save that the appellant was a military service evader.

18. He examined evidence from the Turkish government website (which has an app) and concluded that the offence therein being pursued was likely to be the appellant's failure to attend and perform his military service. On return to Turkey, the judge found that the appellant would be detained and sent to perform his military service.
19. For the appellant, Ms Panagiotopoulou did not rely on the mental health aspects of Dr Hajioff's report. The judge found that Turkey had a functioning mental health system and that the appellant would have 'his whole family still living in the country' to help look after him on return.
20. The First-tier Judge found the appellant's credibility to be 'totally undermined' and rejected his entire account. He dismissed the appeal and the appellant appealed to the Upper Tribunal.

Permission to appeal

21. Permission to appeal was granted by Upper Tribunal Judge Jackson, principally on the basis of the First-tier Judge's failure to deal properly with the vulnerability aspect of his appeal, or to assess the psychiatric evidence in the round.
22. In addition, there was arguably a lack of adequate reasoning in the decision for: rejecting the account of other demonstrations having been attended in London; isolating and rejecting the medical evidence; failing to apply current country guidance; rejecting the criminal proceedings in Turkey; finding the appellant's evidence evasive; and requiring corroboration of his HDP membership and detention.

Rule 24 Reply

23. The respondent made no Rule 24 Reply.
24. That is the basis on which this appeal came before the Upper Tribunal.

Upper Tribunal hearing

25. The appellant gave evidence to the Upper Tribunal. He confirmed his asylum interview. He is not literate in English: he adopted his asylum interview, which he said had been read to him in translation. The refusal letter had also been read to him in Kurdish.
26. The appellant was unable to read more than occasional words in his principal witness statement of 30 April 2018, and despite his willingness to adopt that statement without understanding it, I did not permit him to do so. His supplementary witness statement of 29 May 2019 was read to him in Kurdish at the hearing by the interpreter and the appellant did adopt that statement.
27. I directed Ms Panagiotopoulou to put the matters in the principal witness statement to the appellant. In his evidence-in-chief, the appellant dealt with the two printouts from the Turkish government website, confirming that there was a criminal case

under consideration. He did not know what the offence was: there was a place on the applicant (three dots where printed out) which should have allowed him to click through to the offence, but he had not been able to make it work.

28. When in Turkey, the appellant had distributed leaflets in the town centre of Elbistan, in villages, in shops, and to people's houses. His HDP activities had caused him to be treated quite badly: the appellant had fled that treatment to come to the United Kingdom. If returned, he would be drafted and required to fight his own people. Since he was the subject of criminal proceedings, he would be arrested at the airport and ill-treated by the authorities.
29. The appellant asserted that there were 'seven or eight' other cases against him, but there was no evidence of those. One had a future hearing date set. In the United Kingdom, the appellant had remained active in the Kurdish community centre and attending protests and demonstrations. He had attended 'seven or eight' of those since arriving in the United Kingdom. He would be sent information, then just go and join in. They were about 'defending the Kurdish people'.
30. The appellant relied on photographs from a Turkish language newspaper, the '*Telgraph*' [sic], one of which clearly showed him attending a demonstration on 4 December 2019. He had not been able to provide any further information to his solicitors: after the last demonstration, there had been the Covid lockdown and no other protests. He had provided evidence of attending earlier demonstrations but they were not in the bundle. He had also been distributing leaflets.
31. In cross-examination, the appellant said he came from a very small village in Turkey. He was in touch with family once in a while, but communication was not that easy. He used WhatsApp on his telephone. The family had not asked a lawyer to find out what the charge was against him: they were living in the village, not in Istanbul, and help was limited and lawyers too expensive. He thought the charges were probably related to his previous arrests. He could think of nothing else they could be.
32. The leaflets the appellant distributed for HDP concerned party activities, Newroz meetings, speeches by party leaders, things about the appellant's people and the Kurdish community centres, and also the Party itself. The idea was to distribute the news and gather more people for protests, to bring them together for solidarity. The protests in the United Kingdom were about defending the Kurdish people in Turkey, protesting about President Erdoğan and the government who conflated Kurdish people and PKK sympathisers, and mistreated ordinary Kurds. The protests which the community centre organised were usually held around Westminster, or nearer the Home Office, and that area.
33. The appellant understood that he would be arrested and forced to undergo military service in Turkey if returned. He did not want to do it. There were legal ways of avoiding or delaying military service: for example, you could defer if you were in University, or High School, or you could pay the government to be excused. Military service was a year now. Liability began at 18 years but did not end at any particular

age: you could be asked to perform military service at any age, if you had not yet served.

34. The appellant thought you needed to pay about Turkish Lira 30,000 (about £2500 at today's rates). The appellant did not know how that compared with the amount his father had paid for his journey to the United Kingdom.
35. The appellant had not gone to University: he wanted to be a pilot but the family did not have the money, so he took a short course in hairdressing and worked as a hairdresser. The appellant's main reason to come to the United Kingdom was to have proper freedom, and escape oppression.
36. I asked the appellant at the end of his evidence if he had been comfortable. He said he had. I offered a short break, but the appellant declined: he told me that he did not need it.
37. There was no re-examination.

Documents before the Upper Tribunal

38. I have had regard to all evidence placed before the Upper Tribunal, whether or not specifically mentioned in this decision.

Dr Jack Hajioff's report

39. Dr Jack Hajioff MB ChB MRCS LRCP MRCPsych DPM has assisted the Upper Tribunal on numerous occasions. He is qualified in medicine and surgery, in London and Liverpool (MBChB, MRCS, LRCP) and also a consultant psychiatrist (MRCPsych and DPM). Dr Hajioff's opinion was prepared to the Istanbul Protocol standard in relation to physical injuries, and his assessment of the appellant's post-traumatic stress disorder was prepared to the DSM-IV standard. At [60] in his report, Dr Hajioff confirmed that he was aware of his overriding duty to the court, with which he had complied, with reference to the *Ikarian Reefer* test.
40. Dr Hajioff saw the appellant on 5 September 2019 to prepare his report, interviewing him through an interpreter because the appellant did not speak much English. He was provided with a number of relevant documents.
41. Dr Hajioff has 30 years' experience of working as a psychiatrist, which involves seeing self-inflicted and accidental injuries, as well as mental health assessment. For the last 15 years, he has been a visiting psychiatrist in Pentonville Prison, where he saw many prisoners who had been through traumatic experiences. Many of them had injuries, ranging from cuts and cigarette burns to more serious injuries. For the last 10 years, he has assessed many refugees and asylum seekers and provided formal reports on their mental state. Most of them had injuries of some kind.
42. Dr Hajioff's summary of the appellant's account was that he was born and brought up on a farm with livestock, with his parents, brother and two sisters. He is unmarried and has no children. His formal education ended at the age of 14. He

was sporty, playing a lot of football, but had no significant injuries from that. The appellant used alcohol from time to time, vodka and raki on social occasion, and more since coming to the United Kingdom. He had only used cannabis about four times, to relax him. The appellant is a smoker, and was smoking about 10 cigarettes a day, again to help with stress.

43. The appellant was first arrested, with HDP colleagues, while distributing leaflets on 1 November 2014. He was pushed to the ground, struck with batons, kicked, handcuffed, then put in a cell alone. Later, he was twice interrogated, being questioned, verbally abused and beaten. He was released after three days for lack of evidence.
44. The appellant resumed political activity in 2016. He was arrested again on 27 July 2017 at home, handcuffed, blindfolded and ill treated. He was kicked in the face, breaking his nose. His left arm was twisted so hard behind his back that it broke and the bone was exposed. He agreed to whatever they wanted: he was terrified. When released, the appellant went to hospital where he had an operation to deal with the fracture in his arm.
45. The appellant agreed to report HDP activities to the police, and he did so on 5 occasions, always giving false information. Realising he would be found out, the appellant's father arranged for him to come to the United Kingdom, where he was able to contact a cousin already living here. He claimed asylum, and went to live with that cousin.
46. The appellant said that despite the support of his cousin, and his cousin's family, he remained very anxious. Sometimes he went to work with his cousin and tried to help him there. He was uneasy in public places, especially if there were police around. He avoided crowds of men and never went out after dark alone. Sirens and fireworks startled him.
47. The appellant's appetite had been poor on arrival and remained variable: he had managed to gain back some lost weight, but was now losing weight again. He could not apply himself to demanding tasks and took very little exercise, apart from a walk with the family sometimes. He could not concentrate long enough to read, or to watch sports or films on television.
48. The appellant had difficulty sleeping, and when he slept, he had nightmares, now about twice a week, though they were more frequent when he arrived. The appellant slept in the living room, locked the door every night and left a light on all night. He had panic attacks and had been prescribed paroxetine, an antidepressant. He also had gout, giving him severe pains in his left big toe. The appellant's nails were bitten: he told Dr Hajioff that this habit had begun after his first arrest. That was indicative of marked anxiety or tension.
49. Dr Hajioff applied the Istanbul Protocol classification and was satisfied that an irregular scar on the appellant's forehead was typical of an injury from a blunt instrument. Scars on the appellant's arm from the surgical repair of his fracture were

diagnostic of such a repair. The appellant had covered the long scar on the back of his arm with a tattoo.

50. The appellant had a number of small scars on his hands and fingers which Dr Hajioff considered to be typical of defence injuries. The scars were all pale, indicating that they were likely to be more than a year old. Dr Hajioff had considered whether the scarring could be self-inflicted, but the pattern of scarring was not typical of such scarring and he considered it unlikely.
51. Overall, it was Dr Hajioff's professional opinion that the appellant had chronic post-traumatic stress disorder as defined in DSM-IV, together with evidence of injury consistent with his account. He would benefit from continuing to take paroxetine, which had been shown to be effective for post-traumatic stress disorder as well as depression. Counselling might also help him: NICE had advised in its March 2005 Guidelines that psychological treatment was more effective than medication for treating post-traumatic stress disorder.

Other evidence

52. The appellant produced two articles from the newspaper *Telgraph*, one of which has a colour photograph (kindly supplied after the hearing in electronic format) which shows the appellant wearing a Kurdish headscarf and holding a placard at a demonstration on 4 December 2019. An accompanying article explains that the demonstration was against President Erdoğan's attendance at NATO's 70th anniversary summit in London, at which he attended a side meeting with Prime Minister Boris Johnson, President Macron of France, and Chancellor Angela Merkel of Germany. A photograph on that page is headed *Erdoğan: wanted for war crimes, stop arming Turkey, stop NATO's war on Kurds*.
53. A research response from the Canadian IRB on the situation of Kurds and supporters or perceived supporters of the HDP, at [2] reports a deterioration in the treatment of Kurds in Turkey in recent years, most examples being from 2019. So far as relevant to the appellant's circumstances, at [3.1], the CIRB Report says this:

"3.1 Treatment of Supporters and Perceived Supporters of the HDP

According to sources, the Kurdish government alleges that the HDP has ties to the PKK, which is designated as a "terrorist" group by the EU, among others (*Al Jazeera* 19 Aug. 2019; *Euronews* 5 Nov. 2019), including Turkey (*Al Jazeera* 19 Aug. 2019). Sources further state that the HDP denies any link to the PKK (*Al Jazeera* 19 Aug. 2019; *Euronews* 5 Nov. 2019; *Reuters* 27 Mar. 2019). US Country Reports 2018 indicates that prosecutors "used a broad definition of terrorism and threats to national security" and that, according to defense lawyers and opposition groups, "in some cases" used "what appeared to be legally questionable evidence to file criminal charges against and prosecute a broad range of individuals," including HDP politicians (US 13 Mar. 2019, 15-16). In its annual report for 2018, Human Rights Watch similarly stated that

[m]any terrorism trials in Turkey lack compelling evidence of criminal activity or acts that would reasonably be deemed terrorism, and the practice of holding individuals charged with terrorism offenses in prolonged pretrial detention raised concerns [that] its use has become a form of summary punishment.
(*Human Rights Watch 17 Jan. 2019, 2*)

In a March 2019 article, Associated Press (AP) reports that ... "[t]he government accuses the HDP of links to outlawed Kurdish militants, and 10 lawmakers, 40 mayors and thousands of activists remain jailed," and quoted President Erdoğan as calling the HDP "terror lovers" (*AP 30 Mar. 2019*). According to sources, three mayors were removed from office and 400 people were arrested or detained in August 2019 based on alleged links to the PKK (*Al Jazeera 19 Aug. 2019; BBC 19 Aug. 2019*). ...

According to the Director of a UK-based Turkish organization cited by the UK Home Office, "[b]eing ethnically Kurdish and outspoken politically" "could cause the authorities to suspect an HDP member/supporter of supporting the PKK," and that individuals that "may attract the attention of the authorities" include the following: ... "[c]anvassers (knocking on doors, leafletting)"; ...(*UK Oct. 2019, 18*). ... A human rights lawyer cited in the same report stated that HDP supporters could also be arrested "for handing out leaflets" and targeted for posting on social media, attending a march, meeting or rally, or entering/exiting an HDP-associated building (*UK Oct. 2019, 19*). ...

Further information, including on the treatment of perceived supporters of the HDP, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response."

54. The appellant's country evidence bundle includes an Amnesty International report dated 4 September 2017 and another for the year 2017/2018, as well as the 2018 US State Department Report, Human Rights Watch report and Freedom House Report. I am aware that there are more recent reports available which are referred to in the respondent's CPIN, on which Ms Everett relies.
55. The appellant also relies on the respondent's CPIN evidence on Kurdish political parties and the PKK (October 2019). At 9.2 in the March 2020 report, the respondent summarised evidence gathered in a Fact-Finding Mission to Turkey in October 2019, to the effect that that several government sources conflate support for the HDP with suspicion of PKK support. At 9.3.5, the respondent cited the February 2019 Freedom House report, indicating that following the collapse of the PKK ceasefire in 2015, 'the government accused the HDP of being a proxy for the [PKK] which is designated as a terrorist organisation'.
56. The US State Department Report for 2018 noted that 'opposition party members faced frequent accusations from the highest levels of government of alleged terrorism related crimes'. At 9.4.1, the March 2021 CPIN stated that:

"9.4.1. In June 2019, the HO Freedom from Torture met the Director of a Turkish organisation in the United Kingdom, who stated that 'An escalation in tensions with the PKK [leads] to an increase in harassment of HDP supporters, particularly when

there are waves of activism and protests in the aftermath of anti-PKK/anti-Kurdish events.”

57. Parliamentary immunity for HDP MPs had been removed after the coup in 2016 and high-ranking officials were at risk of prosecution. At paragraph 10.2, the CPIN discussed the extent of arrests for perceived terrorism crimes after the failed 2016 coup.

Submissions

58. For the Secretary of State, Ms Everett relied on the skeleton argument drafted by Ms Willocks-Briscoe, on the refusal letter, and on the respondent’s latest CPIN. The respondent maintained her challenge to the credibility of the appellant’s account. He seemed to have very little curiosity or information about the criminal proceedings in Turkey. His family had not investigated it either. That was implausible and should diminish the credibility of his core account.
59. The respondent accepted that the appellant had some knowledge about the HDP party but his assertions were vague, limited to noble concepts of freedom from oppression. The respondent accepted that Kurds were not treated equally in Turkey but more specific information could be expected. Protests generally had an issue: there was only one photograph, from a single demonstration, showing the appellant. The evidence was not sufficient to demonstrate that the Turkish authorities would be aware of the appellant’s activities in the United Kingdom.
60. Military service was now reduced to 6 months (see CPIN), although during the Covid pandemic it had been extended by a month, for practical reasons. It was possible to buy one’s way out of it for a moderate sum. The appellant would not come to adverse attention on return for failure to undergo military service: see *Sepet and Bulbul*.
61. The appeal should be dismissed.
62. For the appellant, Ms Panagiotopoulou also relied on her skeleton argument and on the country background information. The respondent’s Fact-Finding Mission Report of October 2019 confirmed that HDP Party supporters who had attended demonstrations and distributed leaflets would come to adverse attention; and that HDP supporters are targeted by the authorities. The appellant’s account of his treatment in detention was credible in context, as was his assertion that he was being watched.
63. The Canadian IRB document *Turkey, the situation and treatment of Kurds and Alevis after the coup attempt in July 2016*, referred to in the respondent’s 2019 Fact-Finding Mission report, supported the appellant’s account that as a Kurd he would be perceived as a PKK supporter. Since the coup, the Turkish authorities had disproportionately targeted Kurds and the situation for them in Turkey had deteriorated. The existing country guidance in *IK (Turkey)* when there had been hope of improvement was a false dawn: the situation of Kurds in Turkey had deteriorated,

not improved, since then. The appellant's claim and evidence was consistent with the country background evidence.

64. There was no allowance in the refusal letter for the appellant's mental state during the asylum interview. Some of his answers, particularly about HDP, were very detailed. They were not learned proforma answers.
65. The appellant had given a consistent account of his ill-treatment. There might be a number of reasons why the issue of the criminal case was not pursued, but that was irrelevant to risk on return: the information would be on the GDPS when he returned, and the appellant would be identified and questioned. The appellant had no current travel document and would need an emergency travel document, putting the Turkish authorities on notice of his return. The country evidence indicated that he would be taken to the airport police station and questioned, for 6-9 hours. The appellant could not be expected to lie about what he had been doing in the United Kingdom.
66. That was a clear risk affecting the appellant. The Refugee Convention test was met and the appeal should be allowed.
67. I reserved my decision, which I now give.

Existing country guidance

68. It is a long time since the Upper Tribunal gave country guidance on the position of Kurds in Turkey.
69. In *IA HC KD RO HG (Risk, Guidelines, Separatist) Turkey CG* [2003] UKIAT 00034 (28 July 2003) (*'A(Turkey)'*) at [46], the Immigration Appeal Tribunal identified a number of factors which should be considered when deciding whether an appellant was at risk on return to Turkey:

"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."

70. *A (Turkey)* and the decision in *IK (Returnees, Records, IFA) Turkey CG [2004] UKIAT 00312* (02 December 2004) both the 2016 failed coup and the crackdown which followed it. In *IK*, the IAT held that the *A (Turkey)* list was not a checklist, but should be considered. The country guidance given in *IK* was summarised at [14]:

"1. The evidence of Mr Aydin (paragraph 32) accurately describes the defined and limited ambit of the computerised GBT system. It comprises only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. "Arrests" as comprised in the GBTS require

some court intervention, and must be distinguished from "detentions" by the security forces followed by release without charge. The GBTS is fairly widely accessible and is in particular available to the border police at booths in Istanbul airport, and elsewhere in Turkey to the security forces.

2. In addition, there is border control information collated by the national police (Department for Foreigners, Borders and Asylum) recording past legal arrivals and departures of Turkish citizens, and information about people prohibited from entering Turkey as a result of their activities abroad, collated by MIT.

3. The Judicial Record Directorate keeps judicial records on sentences served by convicted persons, separate from GBTS. The system is known as "Adli Sicil." It is unlikely that this system would be directly accessible at border control in addition to the information in the GBTS.

4. The Nufus registration system comprises details of age, residence, marriage, death, parents' and children's details, and religious status. It may also include arrest warrants and if any of the people listed have been stripped of nationality. There is no evidence that it is directly available at border control.

5. If a person is held for questioning either in the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional inquiry could be made of the authorities in his local area about him, where more extensive records may be kept either manually or on computer. Also, if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them.

6. If there is a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one-way emergency travel document, 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.

7. It will be for an Adjudicator in each case to assess what questions are likely to be asked during such investigation and how a returnee would respond without being required to lie. The ambit of the likely questioning depends upon the circumstances of each case.

8. The escalation of the violence following the ending of the PKK ceasefire reinforces our view that the risk to a Kurdish returnee of ill treatment by the authorities may be greater if his home area is in an area of conflict in Turkey than it would be elsewhere, for the reasons described in paragraphs 90 and 116.

9. The Turkish Government is taking action in legislative and structural terms to address the human rights problems that present a serious obstacle to its membership of the EU. It has made its zero tolerance policy towards torture clear. However the use of torture is long and deep-seated in the security forces and it will take time and continued and determined effort to bring it under control in practice. It is premature to conclude that the long established view of the Tribunal concerning the potential risk of torture in detention as per A (Turkey) requires material revision on the present evidence. However the situation will require review as further evidence becomes available. For the time being as in the past, each case must be assessed on its own

merits from the individual's own history and the relevant risk factors as described in paragraph 46 of A (Turkey).

10. Many of the individual risk factors described in A (Turkey) comprise in themselves a broad spectrum of variable potential risk that requires careful evaluation on the specific facts of each appeal as a whole. The factors described in A (Turkey) were not intended as a simplistic checklist and should not be used as such.

11. A young, fit, unmarried person, leaving his home area and seeking unofficial employment in a big city, may not feel the need to register with the local Mukhtar, at least at the outset. Many do not. However, given the range of basic activities for which a certificate of residence is needed, and which depend upon such registration, 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. This does not necessarily preclude the viability of internal relocation for the reasons described in paragraph 133.13 below.

12. The proper course in assessing the risk for a returnee is normally to decide first whether he has a well founded fear of persecution in his home area based upon a case sensitive assessment of the facts in the context of an analysis of the risk factors described in A (Turkey). If he does not then he is unlikely to be at any real risk anywhere in Turkey.

13. The risk to a specific individual in most circumstances will be at its highest in his home area for a variety of reasons, and particularly if it is located in the areas of conflict in the south and east of Turkey. Conversely the differential nature of the risk outside that area may be sufficient to mean that the individual would not be at real risk of persecution by the state or its agencies elsewhere in Turkey, even if they were made aware of the thrust of the information maintained in his home area by telephone or fax enquiry from the airport police station or elsewhere, or by a transfer of at least some of the information to a new home area on registration with the local Mukhtar there. Internal relocation may well therefore be viable, notwithstanding the need for registration in the new area. The issue is whether any individual's material history would be reasonably likely to lead to persecution outside his home area."

Analysis

71. I consider first what facts can be found, on the evidence before me. It is accepted by the respondent that the appellant is a draft evader. It may well be that the appellant's primary reason for wanting to be in the United Kingdom would be to continue to avoid military service. That is not conclusive of this appeal, however. All of the A (Turkey) factors and the guidance in *IK* must be considered, as well as any change in the intervening years.
72. I am satisfied that Dr Hajioff is in a position to be of assistance to the Upper Tribunal both as to the appellant's psychiatric difficulties, and the scars on his body as they correlate with his account of injury. I treat his evidence as reliable on both issues, by reason of his specific experience. Dr Hajioff did not say whether the appellant would be unable to give evidence to the Upper Tribunal. He expressed no opinion on that issue, presumably because it was not put to him.

73. Having seen the appellant give his evidence, I am satisfied that he was calm and that he gave his evidence to the best of his ability. I treat him as a reliable witness, having regard to the lower standard of proof applicable in international protection claims.
74. I find that this appellant is an ethnic Kurd from south-east Turkey, an area of conflict between the authorities and the PKK. I find that the rest of the appellant's core account is reasonably likely to be true, to that lower standard, and that he is a person who has in the past twice come to notice for HDP activities and has been significantly ill-treated in detention.
75. Of the *A (Turkey)* factors, the evidence is that he has no actual connection with the PKK, but that the authorities in 2017 suspected that he did have such connections as a HDP sympathiser and leaflet distributor. Factors (b), (c), (d) and (e) all apply: he has past arrests and some kind of pending criminal charge, and he was placed on reporting conditions, which he has breached. There are no family connections engaging (f).
76. I accept Dr Hajioff's evidence under (e) as to the degree of past ill-treatment: the appellant has both scarring which is diagnostic or typical of what happened to him, and post-traumatic stress disorder and panic attacks, caused by those events. The appellant left Turkey reasonably promptly, after about 5 weeks. He did become an informer (factor (m)).
77. The appellant is being actively sought for the criminal offence (factors (h) and (l)). He is a Kurdish man and of the Alevi faith (factors (i) and (j)). The appellant's evidence is that his passport was taken from him at the airport on arrival, but he did have his Turkish identity card (factor (k)). He has no activities in connection with the PKK, but he does have sur place activity for HDP, however limited (factor (n)). The appellant is a draft evader (factor (o)).
78. Given the accepted detentions and ill treatment, this appeal is a 'past persecution' case engaging paragraph 339K of the Immigration Rules HC 395 (as amended):
- "339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated."
79. I consider whether the respondent has shown that there are good reasons to consider that persecution or serious harm will not be repeated if the appellant is returned now. This appellant is a person who has failed to report or to give the information which he promised to the police in his home area about the activities of HDP. There was a risk in his home area when his father arranged for the appellant to come to the United Kingdom.
80. I place weight on the record of some kind of criminal offence which appears on the mobile phone app already mentioned. The appellant showed the app to the Home

Office Presenting Officer on his telephone at the First-tier Tribunal hearing, and Ms Everett did not seek to suggest that the information extracted from that app on two occasions and included in the bundle was not a genuine record of some kind of outstanding criminal proceedings against him.

81. The country guidance in *IK* in 2004 was that the GBTS information was widely accessible, in particular to border police in Istanbul airport and the security forces elsewhere in Turkey. At [6], the Tribunal in *IK* found that an entry there, or the use of a one-way emergency travel document, would give rise to a reasonable likelihood that he will be identifiable as a failed asylum seeker and sent to the airport police station.
82. There have been significant technological developments in the 17 years since 2004, when the *IK* country guidance was given, as well as a deterioration in the treatment of Turkey's citizens since the coup attempt in 2016, and I note that the appellant's second, and more serious, ill-treatment in detention fell in 2017, in the aftermath of the failed coup.
83. The optimistic observation at [9] of the country guidance in *IK* that Turkey was 'taking action in legislative and structural terms to address the human rights problems that present a serious obstacle to its membership of the European Union' was qualified thus:

"9. ...However the use of torture is long and deep-seated in the security forces and it will take time and continued and determined effort to bring it under control in practice. It is premature to conclude that the long established view of the Tribunal concerning the potential risk of torture in detention as per *A (Turkey)* requires material revision on the present evidence. However the situation will require review as further evidence becomes available. For the time being as in the past, each case must be assessed on its own merits from the individual's own history and the relevant risk factors as described in paragraph 46 of *A (Turkey)*."

The appellant's experiences in 2014 and 2017 indicate that far from bringing torture under control in practice, serious ill-treatment continues to be a feature of detention in Turkey.

84. The *IK* guidance as to what can be accessed at the airport is not up to date: if any citizen of Turkey can consult the national records held on him, using the Turkish government app, it is reasonable to conclude that the same information will be available to the authorities at the airport.
85. The appellant cannot be expected or required to lie about his activities in the United Kingdom. I have regard to the *Telgraph* photograph: even if his attendance at that demonstration was self-serving, the article is available publicly on the internet, which the Turkish authorities monitor.

86. I am not satisfied, on the evidence before me, that there are good reasons for finding that should the appellant come to adverse attention at the airport on return, he would not be taken to the airport police station and ill-treated or tortured there.
87. Accordingly, he is entitled to refugee protection and this appeal is allowed.

DECISION

88. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appellant's appeal.

Signed *Judith AJC Gleeson*
Upper Tribunal Judge Gleeson

Date: 9 August 2021