Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07388/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision& Reasons Promulgated**
On 7 July 2021	**On 16 August 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

OG
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S. Panagiotopoulou (Counsel instructed by Montague Solicitors LLP)
For the Respondent: Mr S. Kotas (Home Office Senior Presenting Officer)

DECISION AND REASONS

DIRECTION REGARDING ANONYMITY

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the Appellant or members of his family. This direction applies

to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

INTRODUCTION

1. The Appellant is a Turkish national of Kurdish ethnicity, born on 29 December 1986. On 3 October 2017 the Appellant applied for a Visit Visa which was granted and on the 2 November 2017 the Appellant entered the United Kingdom. On 12 October 2018 the Appellant claimed asylum on the basis of his claimed fear of the Turkish authorities.

2. On 21 July 2019, the Secretary of State made a decision to refuse to grant the Appellant's asylum and humanitarian protection claims as well as to refuse claims under Articles 2, 3 & 8 ECHR. The Appellant has exercised his right to appeal by reference to s. 82 of the NIAA 2002.

PROCEDURAL HISTORY

3. The first time the appeal was heard was before First-tier Tribunal Judge Lucas on 4 September 2019. Judge Lucas dismissed the Appellant's appeal in a decision promulgated on 19 September 2019. The Appellant appealed against that decision to the Upper Tribunal eventually resulting in Upper Tribunal Judge Smith finding legal error by way of a decision promulgated on 31 December 2019. The effect of that decision was to set aside the entirety of Judge Lucas's decision and the matter was then reheard in the First-tier Tribunal before Judge Roopnarine-Davies on 11 February 2020.

4. In a decision promulgated on 6 March 2020, Judge Roopnarine-Davies dismissed all aspects of the Appellant's appeal. The Appellant again appealed to the Upper Tribunal, permission being granted on 13 November 2020 and on 17 March 2021 Upper Tribunal Judge Hanson set aside the decision of First-tier Judge Roopnarine-Davies in its entirety, predominately based upon the Secretary of State's concession in the Rule 24 reply (dated 25 January 2021), that there were material errors of law in that FtT decision.

5. The effect of the decision of Upper Tribunal Judge Hanson was to require a full rehearing of the substantive protection and human rights appeals which have been maintained in the UT.

THE REASONS FOR REFUSAL LETTER ("RFRL") – 21 JULY 2019

6. In the RFRL dated 21 July 2019, the Secretary of State noted that the Appellant had previously applied for a Visit Visa to the United Kingdom on 4 August 2016 which was refused on 10 August 2016.

7. Additionally, it was noted that, having arrived in the United Kingdom on 2 November 2017 on a Visit Visa, the Appellant had initially applied for Leave to

Remain on the basis of the Ankara Agreement but that this application was refused by the Home Office in June 2018.

8. The letter went on to make general negative observations of the Appellant's credibility including raising section 8(2) The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 ("the 2004 Act") in respect of the delay taken by the Appellant to claim asylum and also noted that the Appellant had left Turkey without experiencing any adverse difficulties from the authorities (see para. 37) and concluded that the Appellant was not a member of the HDP and had not experienced adverse treatment as a result (para. 39).

9. The Secretary of State also concluded that members of the Alevi faith were not generally persecuted in Turkey and went on to reject the Appellant's human rights submissions including contending that there will be no very significant obstacles to the Appellant's reintegration into Turkey by reference to 276ADE(1)(vi) of the Immigration Rules and that there were no exceptional reasons for otherwise granting Leave to Remain outside of the Rules.

THE APPELLANT'S CLAIM

10. From the various forms of written evidence in this appeal it can be seen that the Appellant claims to be a person of Kurdish ethnicity and of the Alevi faith born in Varto district, Mus province in the south-east of Turkey. As a result of discrimination experienced by the family from the local authorities in the area, the family relocated to Istanbul when the Appellant was seven years old. As a consequence of those difficulties the Appellant claims that he became interested in pro-Kurdish politics and in particular the BDP and later, the HDP party. The Appellant further claims that he was detained by the Turkish authorities on four separate occasions:

    a. The first on 1 May 2009, the Appellant attended a May Day protest/rally and when the Appellant and friends attempted to go to Taksim Square in Istanbul they were attacked by police who detained many people including the Appellant;

    b. The second on 7 or 8 July 2010 when the Appellant and two relatives were stopped in Varto district, Mus province (the home area in the south-east) – the Appellant was not specifically targeted (Q69 of the Asylum Interview Record ("AIR");

    c. The third on 20 March 2016 when the Appellant plus others attempted to celebrate Newroz in Bakirköy area of Istanbul; the Appellant was with the HDP cortege and they were refused entry to the celebrations. The Appellant was detained and interrogated about being a member of the PKK;

    d. And the fourth on 1 May 2017 when there was general disturbance at a May Day rally in Bakirköy which the Appellant attended with other HDP

members and supporters – the Appellant was detained with other people (he was not personally targeted (Q91 of the AIR)).

11. The Appellant alleges that he was the victim of serious ill-treatment during those detentions and that later, after the Appellant had left Turkey to visit the UK in 2017, he believes his name was given by a friend to the Turkish police. The Appellant claims that the friend who was questioned, who might have given the Appellant's name to the police, might have suggested that the Appellant was the man wearing a headscarf in a picture taken by the Turkish police which the Appellant had been asked about during his fourth detention (Qs 104, 106 & 134 of the AIR) and as a result there have been further raids on the Appellant's family home in an attempt by the Turkish authorities to locate the Appellant. He also claims that his brother was detained and interrogated as to the Appellant's whereabouts and that the authorities told the brother that the Appellant should return to the home area and surrender. As a consequence of this the Appellant asserts that there is a real risk of his detention and ill-treatment on return to Turkey on account of his actual association or perceived associations to the HDP party and the PKK.

THE APPEAL HEARING

12. The appeal hearing was conducted in person at Field House on 7 July 2021. We heard oral evidence from the Appellant given in the Turkish language which we have made a note of in the record of proceedings. At no point during the hearing was there any suggestion of difficulties in understanding from either the Appellant or the interpreter. We also heard submissions from Ms Panagiotopoulou, the Appellant's Counsel, as well as from Mr Kotas, the Secretary of State's Senior Presenting Officer which we have also made a note of.

13. In assessing the evidence and those submissions we have had full regard to the various Appellant's bundles dated 17 June 2021; 2 September 2019 and 5 February 2020; the Home Office bundle as well as the separate but additional reports of the IRB, the Home Office fact-finding mission published in October 2019, an article from the Baghdad Post, dated 10 February 2020, the 2014 letter from the HDP and various original photographs many of which have been reproduced in the various bundles. We have also been assisted by Ms Panagiotopoulou's detailed skeleton argument dated 10 February 2020.

14. At the end of the hearing we reserved judgment which we now give.

THE LEGAL FRAMEWORK

15. The Appellant's right of appeal and the Tribunal's main powers to determine the appeal are detailed in Part V of the 2002 Nationality and Immigration Act ("NIAA 2002").

16. The Appellant claims that the Secretary of State's decision would be a breach of the United Kingdom's obligations under the 1951 Geneva Convention relating to

the status of refugees and the 1967 Protocol thereto (the Refugee Convention). The Appellant therefore claims to be a refugee within the definition in The Refugee or Person in Need of International Protection (Qualification) Regulations 2006.

17. In the alternative the Appellant is to be taken to claim Humanitarian Protection pursuant to para. 339C of the Immigration Rules (by which has been implemented EU Council Directive 2004/83/EC). In addition, the Appellant says that his removal from the United Kingdom would be a breach of the United Kingdom's obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms – now incorporated into English Law by the provisions of the Human Rights Act 1998.

18. A refugee is defined by Regulation 2 of the 2006 Qualification Regulations by reference to Article 1A of the Refugee Convention, and thus as someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it. The burden is on the Appellant to show in an asylum appeal that their return will expose them to a real risk of an act of persecution for a Refugee Convention reason.

19. A grant of Humanitarian Protection is only to be made pursuant to para. 339C of the Immigration Rules. The Rules require that the relevant person must not qualify as a refugee, and, must not be a person who is excluded by virtue of para. 339D. An Appellant must show substantial grounds for believing that if returned to their country of return, they would face a real risk of suffering serious harm and that they are unable, or, owing to such risk, unwilling to avail themselves of the protection of that country. Serious harm is also defined in para. 339C.

20. In relation to an asylum appeal, a Humanitarian Protection appeal, and a Human Rights appeal we are obliged to look at the case in the round, and to judge the situation at the time of hearing the appeal, applying para. 339J-P of the Immigration Rules.

21. We have also given careful consideration to the Tribunal's decision in IK (Returnees - Records – IFA) Turkey CG [2004] UKIAT 00312 ("IK"), which remains extant Country Guidance.

THE ASSESSMENT OF CREDIBILITY

22. In assessing the Appellant's credibility then, we have taken into account that the standard of proof is the lower standard, and as per Karanakaran v Secretary of State for the Home Department [2000] 3 All ER 449 and Ravichandran [1996] Imm AR 97 we must take into account all of the material issues in the round.

23. The burden is upon the Appellant to establish the core elements of the protection claim. A failure to do so will mean that the person in question has failed to make out their claim in those key respects, as per MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49 at [48] and HH (Afghanistan) v Secretary of State for the Home Department [2014] EWCA Civ 569 at [9].

24. We have also been guided in that assessment by the terms of Article 4 of EU Council Directive (2004/83/EC) as well as the transposition of this Article into the Immigration Rules at 339L.

25. We have borne in mind that genuine protection claimants might exaggerate or fabricate evidence in their claim in order to reduce the risk of the appeal being wrongly dismissed as per SB (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 160 at [43].

26. In the same judgment the Court laid out the approach to the assessment of credibility at [46]:

> "In cases (such as the present) where the credibility of the Appellant is in issue courts adopt a variety of different evaluative techniques to assess the evidence. The court will for instance consider: (i) the consistency (or otherwise) of accounts given to investigators at different points in time; (ii) the consistency (or otherwise) of an Appellant's narrative case for asylum with his actual conduct at earlier stages and periods in time; (iii) whether, on facts found or agreed or which are incontrovertible, the Appellant is a person who can be categorised as at risk if returned, and, if so, as to the nature and extent of that risk (taking account of applicable Country Guidance); (iv) the adequacy (or by contrast paucity) of evidence on relevant issues that, logically, the Appellant should be able to adduce in order to support his or her case; and (v), the overall plausibility of an Appellant's account."

27. We have also taken into account the Court of Appeal's view of the applicability of the 'Lucas Direction[1]' to the IAC in Uddin v The Secretary of State for the Home Department [2020] EWCA Civ 338 at para. 11:

> "…A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure. That is because a person's motives may be different as respects different questions. The warning is not to be found in the judgments before this court. This is perhaps a useful opportunity to emphasise that the utility of the self-direction is of general application and not limited to family and criminal cases."

28. We have additionally reminded ourselves of the Court's recent clarification that the terms: *credibility* and *plausibility* are not terms of art and do not have "*special technical meaning*", see MN v The Secretary of State for the Home Department (Rev 3) [2020] EWCA Civ 1746 at para. 127.

[1] CACD in *R v Lucas* [1981] QB 720

29. We have also been careful to heed the Tribunal's warning in TK (Tamils – LP updated) Sri Lanka CG [2009] UKAIT 00049 to avoid treating country evidence as automatically 'objective' and have therefore scrutinised the relevant background evidence provided with appropriate care:

> "7. The emphasis we place on assessment based on objective merit prompts us to make one further comment. It is still widespread practice for practitioners and Judges to refer to "objective country evidence" when all they mean is background country evidence. In our view, to refer to such evidence as "objective" obscures the need for the decision-maker to subject such evidence to scrutiny to see if it conforms to the COI standards just noted. This practice appears to have had its origin in a distinction between evidence relating to an individual applicant (so-called "subjective evidence") and evidence about country conditions (so-called "objective evidence"), but as our subsequent deliberations on the Appellant's case illustrate (see below paras 153-9), even this distinction can cause confusion when there is an issue about whether an Appellant's subjective fears have an objective foundation. We hope the above practice will cease."

FINDINGS AND REASONS

30. We should start by noting that, as part of our assessment of the reliability of the Appellant's core claim to international protection, that his general claim to have been subject to arrest, detention and ill-treatment during disturbances relating to, for instance, Newroz is, in general terms, in keeping with the current background evidence, as well as the conclusions of the Tribunal in IK, see for instance [110, 111, 116-120].

31. There is also no dispute about the Appellant's Kurdish ethnicity or that he comes from the south-east of Turkey.

32. We also consider that the Appellant has been relatively consistent about the timing and detail of the first two detentions. We therefore accept that the Appellant was detained on two occasions in the past but, for reasons that we outline below, we do not accept that the Appellant was subject to detention and/or ill-treatment in the last two claimed detentions (2016 & 2017).

33. We also do not think that there is much by way of discrepancy in the Appellant's responses to his knowledge of the HDP's political aims (see paras. 26-32 of the RFRL). The SSHD has criticised the Appellant's answers in the AIR as being vague or not reflecting the real detail of the party's declared aims and, in fact, the Appellant himself accepted this in the letter of further clarification sent by his current solicitors to the Home Office (dated 15 July 2019) at page 12 of the Appellant's bundle. In our view however, although the Appellant's answers were brief they are not obviously at odds with the HDP's general quest for relieving perceived inequality in Turkey.

34. We do however consider that there are material problems with the Appellant's credibility which have ultimately led us to conclude that his core claim to be a

member of the HDP, to have been the victim of recent mistreatment in detention as well as being of ongoing adverse interest to the Turkish authorities is not credible when considered in the round and applying the lower standard of proof.

The third detention (20 March 2016)

35. We start with the third detention (20 March 2016). Whilst we note Counsel's written submission in the February 2020 skeleton argument (para. 8) that the SSHD had not directly challenged the detail of the four claimed detentions but had rather observed that none of those were directly related to HDP activities, we also note that there was no formal concession on these detentions by the SSHD in the RFRL.

36. Equally, at the hearing before us, Mr Kotas did challenge the Appellant on the reliability of some of this evidence and submitted that the Appellant had not been tortured or arrested as claimed. In cross-examination the Appellant was asked why his description of the ill-treatment during the third detention in March 2016 at Q84 of the AIR (11 June 2019) only made reference to the use of electric shock to the index finger (and 'metals') and not to the other forms of torture as alleged in his February 2019 witness statement at para. 11 including: having his nose broken, his head being hit against the table, hair being pulled and so on. The Appellant's response was that he was not asked details of the detention but only how many times he was arrested and the dates. He also earlier told us that he had already mentioned the details in his witness statement.

37. In our view this is not a reasonable explanation for why there is so little detail in the Appellant's response at Q84. It is quite plain that he was asked by the interviewing officer "*what happened in those 2 days?*" (referring to the Appellant's earlier evidence about the 2016 detention) and that he had, previously to this question, provided detailed evidence about the events leading up to his alleged arrest on that day at Q78.

38. We have also noted the compulsory statement detailed at page 3/33 of the SEF interview which would have been read to the Appellant (it has not been suggested that it was not): "*This interview is your opportunity to tell us your reasons for claiming asylum. It is very important you do not withhold any information you believe to be relevant to support your claim. I will help you by asking you questions so that we have the information we need to make a decision in your case*".

39. Whilst the Appellant did mention a sinus problem at Q3 of the AIR which he told the Tribunal in the hearing was a consequence of the broken nose that he had received in detention, we note that the Appellant has not received medical treatment in the UK and there is no other medical evidence in respect of the sinus problems described at Q3.

40. We therefore wholly reject the Appellant's evidence that he was not asked to give the detail of the alleged abuse during the third detention during the AI. We consider that this is an adverse point against the Appellant's credibility and, is

overall, part of the reason why we have decided to reject the Appellant's claim to have been detained and mistreated on the third occasion as claimed.

The delay in claiming asylum and the fourth detention (1 May 2017)

41. In accordance with the wording of section 8 of the 2004 act as well as the guidance in terms of the application of this provision provided for in the Court of Appeal's decision of JT (Cameroon) v Secretary of State for the Home Department [2008] EWCA Civ 878, we have been careful not to treat this provision as being determinative of the reliability of the Appellant's core claim.

42. Nonetheless, we consider that we have not received a *reasonable explanation* from the Appellant as to why it was that he took almost 12 months to claim asylum in the UK. Our assessment of this issue is made up of a number of elements and we start with the fourth detention as claimed by the Appellant.

The Appellant's fourth detention (1 May 2017)

43. We agree with Mr Kotas that, bearing in mind the severity of the adverse treatment that the Appellant claimed to have received in Turkey in, especially, May 2017 (the 4th detention), it is not credible that, having managed to travel to the UK without harm, the Appellant would not then have sought to claim asylum as soon as he reasonably could.

44. In reaching that conclusion we have had regard to the Appellant's oral evidence that he "*had no fears or concerns*" about returning. He also told us that this was because there were no search warrants out for him at this time.

45. We take into account Ms Panagiotopoulou's submission that the Appellant's attitude to the risk of future mistreatment must be seen in the context of his personal experience of violence as well as set into the context of what is said in the background evidence about the frequent use of violence against political Kurdish people by the Turkish state (for instance some of the sources in the *Report of a Home Office Fact-Finding Mission Turkey: Kurds, the HDP and the PKK* (Conducted 17 June to 21 June 2019) Published October 2019 ("the FFM report 2019")), but even with that in mind, we have concluded that the heightened level of violence was such, on the Appellant's claim, that he could not have genuinely considered returning to Turkey.

46. We have also taken into account that the Appellant had entered on a Visit Visa valid for 6 months but, again, in our view, in this case, if the Appellant had been brutalised as claimed we consider it most likely that he would have sought to claim asylum on this basis as soon as he practically could. It is important to note that the Appellant did not explain the delay in claiming asylum on the basis of having temporary lawful status in the UK (the 6-month visit-visa) but that he simply did not think that there was any problem about returning until May 2018 when he claims that the family home in Turkey was raided (see for instance para. 12 of the 30 August 2019 witness statement).

47. We have carefully noted that the Appellant said that when he came to the UK he was not of particular interest to the Turkish authorities and that this adverse interest occurred in May 2018 around 6 months after his entry to the UK but we do not think that is plausible either. In drawing that conclusion we have carefully considered the Appellant's evidence in his witness statement dated 4 February 2019 at para. 13:

> "*They took us to Vatan Street Anti-Terror branch. On arrival I was searched. They confiscated my personal belongings. Then I was taken to a room where had fingerprints and photo taken. Before they did this, my handcuffs were removed. My eyes were blindfolded again with a black cloth. Then I was taken to the ground floor, they removed the blindfold and put me in the cell and locked the door and left. It was a dark, smelly cell. A few hours later, someone came, blindfolded my eyes, handcuffed my hands behind my back and took me upstairs. I was forced to sit in a chair. They started talking by saying that they were aware of my previous detention. Since tension occurred between the HDP group and the police, I was directly asked questions about PKK, nature of my involvement with PKK's and wanted to know PKK's Istanbul provincial committee. In addition of that they want to know that why I shouted slogans against the AK Party and the state. I told them I didn't have anything to do with PKK or YDGH and I didn't know who was working for the PKK and YDGH either in my neighbourhood or an Istanbul province. The police didn't like my answers. One of them started to yell at me, and if I don't answer his questions like a man, he would get my dead body out of there. I was subjected to a few slaps furiously, and my head was hit against the wall a few times as well and I fell down the chair on the floor. Interrogation officer swore and put me back in the chair. They asked the same questions again and again. I was accused of having thrown stones at the police and carrying a post of the head of the Terrorist, thus violating the law. I didn't do anything illegal, I didn't know who threw stones and did not know who carried anyone's poster; there were two persons in the room that questioned me as I separated them from their voices. I was subjected to beatings with police batons. I was subjected to swearing, humiliations, fists, slapping and kicking. I was subject to pressurise cold water. I couldn't stand the pain. This interrogation lasted approximately 2 -3 hours…*"

And in respect of the interrogation and beatings the next day:

> "*I was blindfolded again. Again I was subjected to threats, insulted, kicked, slapped, punched and beatings. They grabbed my hair and hit me against the wall. They were swearing at me. I was subjected to falaka in this interrogation…*
>
> *On the evening of my detention, I found out the police had raided our house and that my family home was ransacked. They also asked a lot of questions about what I did for the PKK. My family went to HDP Sultanbeyli branch and the party arrange a lawyer to send to the anti-terrorism branch to see me but they were not allowed to meet me*." (sic throughout)

48. We have also kept in mind the Court of Appeal's decision on the approach to plausibility in the binding decision of Y v Secretary of State for the Home

Department [2006] EWCA Civ 1223 at paras. 25-27 and been careful not to judge this element of the assessment through our own expectations of life in the UK:

> "27. None of this, however, means that an adjudicator is required to take at face value an account of facts proffered by an Appellant, no matter how contrary to common sense and experience of human behaviour the account may be. The decision maker is not expected to suspend his own judgment, nor does Mr Singh contend that he should. In appropriate cases, he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief. The point was well put in the Awala case by Lord Brodie at para. 24 when he said this:
>
> > "… the Tribunal of fact need not necessarily accept an applicant's account simply because it is not contradicted at the relevant hearing. The Tribunal of fact is entitled to make reasonable findings based on implausibilities, common sense and rationality, and may reject evidence if it is not consistent with the probabilities affecting the case as a whole".
>
> He then added a little later:
>
> > "… while a decision on credibility must be reached rationally, in doing so the decision maker is entitled to draw on his common sense and his ability, as a practical and informed person, to identify what is or is not plausible".

49. However, when taking into account the Appellant's own claim as to the severity of ill-treatment during the fourth detention and his oral evidence that during this interrogation he was told that he was considered to be a member of the Yurtsever Devrimci Gençlik Hareket (The Patriotic Revolutionary Youth Movement) ("YDGH"), we conclude that the Appellant's *lack of concern* about returning to Turkey in 2017 - 2018 is simply not plausible seen through the prism of the background evidence about the antipathy from the Turkish state to those involved or perceived to be involved with the PKK and the AIT's findings in IK. It is also inconsistent with his own claim that the reason for the heightened interest in him in 2018, and the overall reason why he started to fear returning to Turkey, was because the authorities thought that he worked with the YDGH (para. 15 of the 4 February 2019 witness statement).

50. We also reject the Appellant's evidence that he would have sought to return to Turkey to see his family (because he had no concern about ongoing, adverse interest) if he had been successful in obtaining Leave to Remain under the Ankara Agreement in 2018. This evidence simply does not credibly sit with the Appellant's description of events in Turkey in 2016 and 2017 even set into the context of the background evidence of general difficulties for those associated with Kurdish politics in Turkey. We therefore consider that this does not constitute a reasonable explanation for not claiming asylum as soon as he arrived (or within a reasonable period) in the UK in 2017.

The advice of a previous solicitor

51. We also noted the Appellant's evidence that he was told by a different solicitor in 2018 that he was not eligible to apply for asylum because he entered the UK lawfully and had already applied under the Ankara Agreement (para. 20 of the August 2019 witness statement), which he states is part of the explanation for the delay in claiming. We remind ourselves that in such a circumstance, where a previous solicitor is accused of giving plainly incorrect legal advice, the Appellant must show that he has made some attempt to give that legal advisor a right of reply, see for instance Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197(IAC) at para. 16:

> "…
>
> xi) Although we do not rule out that unfairness could be established through the incompetence of the advocate, there is a high threshold to establish. It is not sufficient that the advocate exercised forensic judgment that the Appellant now disagrees with or has subsequently proven to be unfortunate. Some regard may be relevant to the test in the Court of Appeal Criminal Division where conduct by the advocate is relied on as a ground to challenge the safety of the conviction (see Archbold 2012 7-83). Although the criminal courts are now concerned primarily with the impact of the failure of the advocate on the trial process, there must be demonstrated incompetence such as a course of action that no reasonable advocate would have taken. The allegations against counsel appearing on 30 March nowhere reached that standard.
>
> xii) Just as in criminal appeals, if the Appellant mounts criticism of a representative, legal privilege must be expressly waived and draft statements and conference notes relevant to the case should be disclosed. This was not done in the present case. We have no explanation for the differences in account and why the Appellant behaved as he did at the appeal and what he intended to say if any different from what the Judge recorded him as saying. In any event, where credibility is in issue his complaint may not carry weight if it is evidentially unsupported."

And in BT (Former solicitors alleged misconduct) Nepal [2004] UKIAT 00311 at para. 5. In this case, and in the absence of such opportunity, we conclude that the Appellant has not overall established that he was given wrong legal advice as part of the reasons for the delay in claiming asylum in this case.

52. We therefore conclude that the Appellant has not reliably explained why, if he had discovered in May 2018 that there had been a raid on the family home in Turkey which was predicated upon adverse interest in the Appellant from the Turkish state, he did not claim asylum at this point but chose to apply for a visa under the Ankara agreement and did not claim international protection until much later in September 2018.

The claim to mental health problems:

53. During Mr Kotas's cross-examination, the Appellant told the Tribunal that he did not know to mention the fact that he suffers mentally as a consequence of his

torture when asked about his health in the AIR (conducted on the 11 June 2019) at Q2. We also note that despite the specific reference to mental health conditions at 2.3 of the Screening Interview, the Appellant claimed that this was not interpreted to him and that he understood these questions to be related to chronic physical health conditions and so did not mention any mental health problems.

54. Overall, we are not prepared to accept the Appellant's claim that he has mental health problems whether or not related to mistreatment in Turkey. We are not prepared to accept his belated claim that 2.3 of the Screening Interview was not properly translated to him and, in the absence of any corroboratory medical evidence (the Appellant told the Tribunal that he is not being and has not been treated for any mental health difficulties), we are not prepared to accept that the Appellant is afflicted as claimed.

55. This is not a case in which it is said that the Appellant does not recognise his own alleged mental health issues or has some pre-disposed difficulty in admitting such problems: he mentioned this without any apparent difficulty during the hearing and mentioned suffering psychologically after a suicide bomb attack in Ankara on 10 October 2015 at para. 9 of the 4 February 2019 witness statement.

56. We also note the Appellant's oral evidence that he went to a GP in Newport on one occasion with his family but does not know if he was registered. We again do not accept that, in this case, the Appellant would not have sought help from the GP in the UK through his family or that, according to his evidence given to Counsel's re-examination, he did not know that he was able to get such treatment in the UK. This is incongruous with the amount of time the Appellant has spent in the UK; his receipt of physiotherapy in the UK for the after-effects of a road traffic accident in November 2017 and his access to legal advice which would easily have resolved this issue. In our view the Appellant has clearly embellished having mental health problems, and whilst this is not determinative of the reliability of his core credibility, it is nonetheless part of the overall picture of the Appellant's lack of truthfulness in his evidence to the Tribunal.

57. We also formally reject the Appellant's claim that the road traffic accident in November 2017 (in the UK) led to the Appellant remaining longer in the UK than the 6 months given on his Visit Visa (until 18 April 2018, see A2 of the Home Office bundle), as per the explanation at para. 14 of the February 2019 statement. The Appellant has only produced a letter dated 9 April 2018 (at page 18 of the Appellant's bundle) from Carpenter's (solicitors) which records a claim in respect of an accident on 17 November 2017.

58. We have not seen any medical evidence to support the Appellant's contention that any injuries received would have caused him to have to stay beyond 18 April 2018 and there is equally no corroboratory evidence from the Appellant's sister in Newport (UK) to support the claim that the Appellant had to stay longer because of his niece's epilepsy. There is a letter from a Dr Barber (dated 26 February

2018), consultant paediatrician at Royal Gwent Hospital but this letter states that Miss HA had a probable seizure which was now fully resolved and a "further seizure" in August 2017 (before the Appellant had even arrived in the UK) after which Miss HA "has been absolutely fine". We consider that we have been given no reasonable explanation for the absence of such corroboratory evidence.

The ongoing adverse interest in the Appellant

59. We also, overall, have concluded that the Appellant is not reliable in his claim that, since his departure from Turkey in 2017, his family home has been subject to numerous raids which appear to be largely based on a desire to locate the Appellant and, as a corollary issue, that his brother was detained as well. Whilst we recognise that that there is no legal duty *per se* to corroborate the underlying claim for protection, there is nonetheless no evidence at all from the Appellant's friends in the HDP whom, the Appellant told us in oral evidence, had confirmed to him that the reason for the adverse interest in him was that a friend had given the Appellant's name to the police. We again find that the Appellant has failed to provide a reasonable explanation for the absence of evidence which could logically corroborate his claim (as per SB at [46]).

60. We also note that, despite the Appellant's evidence that the HDP arranged for a lawyer in Turkey to see the Appellant whilst he was detained on the fourth occasion in 2017 (para. 13 of the February 2019 witness statement) – albeit the lawyer was not able to have access to the Appellant, no such corroboratory evidence has been provided to the Tribunal.

61. When asked about the absence of corroboratory evidence from, for instance, the Appellant's family in Turkey or the UK, the Appellant replied that he was not asked about that by anyone. We reject that response as incredible.

62. In our judgment it is simply not true that having spent the best part of 3 years pursuing, firstly an application under the Ankara Agreement and then a protection claim to the Home Office and to the Tribunal on two previous occasions, that it would not have occurred to the Appellant that corroboratory evidence about his problems from the HDP or his family in Turkey might be useful. This is especially the case in light of the fact that the Appellant has provided a letter said to be issued by the HDP from 2014 (we have seen the original).

63. In her submissions, Ms Panagiotopoulou argued that there was little point in the Appellant providing such evidence because the SSHD was likely to challenge its reliability and the Tribunal might conclude that little weight should be attached to it.

64. We firstly remind ourselves that this was not the Appellant's explanation for the failure to provide such documents, but secondly, in considering this submission we have also concluded that this is simply not a good reason for such an absence. In our view, if the Appellant was truthful about his fear of the Turkish authorities

then he would have attempted to provide corroboration even if it could be challenged by the SSHD. We therefore find that the absence of a reasonable explanation for failing to provide evidence which could logically have been provided seriously undermines his claim to be of current, adverse interest from the Turkish authorities.

65. We have also decided for similar reasons overall, that the Appellant has not reliably established that his brother was detained and/or that it was in response to an adverse interest in the Appellant as claimed.

Membership of the HDP

66. As noted, we have seen the 'original' of a Turkish document (translated in the Appellant's bundle at page 22) which is said to have been issued by the party and confirms his membership since 10 September 2014. We have taken this document in the round with the other evidence, applying the well-known principles in Tanveer Ahmed, and have concluded that little weight should be given to this document. We have already expressed serious concern about other aspects of the Appellant's core evidence and noted the sheer absence of corroboratory evidence which could have reasonably been provided to the Tribunal or SSHD and the failure of the Appellant to provide a reasonable explanation for the absence of that evidence.

67. We have also noted that despite the Appellant claiming to be a member of the HDP in the AIR (see Qs 28 & 32) and his witness statement dated 30 August 2019 at para. 3, this is contradicted in the letter from his current solicitors at page 12 of the Appellant's bundle. In that letter (dated 15 July 2019) it is expressly stated that "*Q42 - The applicant instructs that he was not a member of the HDP but he was a member of the BDP*". The Appellant has had sufficient time to address this material inconsistency in his evidence but has not sought to do so.

68. We are also concerned about the Appellant's answer at Q38 of the AIR: he was asked what evidence he had to support his claim to be a member of "*this party*" (at Q37 the Appellant said that he became "*the other parties member*" (sic) in 2014 when the HDP came into existence), and replied "*I don't have any. I didn't bring my cards and I asked my family to find it but they couldn't*". In the follow up letter from the Appellant's representatives (page 12 of the bundle), the Appellant asserted that he was in fact confused and that "*neither BDP or HDP issued membership cards*". This latter representation appears to be consistent with the background evidence in the FFM 2019 at 2.2.4:

> "An HDP MP explained that the HDP do not offer ID cards, membership card or document cards for members. You can apply at district/provincial levels and once you are accepted, the new member's name is in the system."

69. We consider that the Appellant's explanation in the 15 July 2019 letter, that he was confused does not adequately explain why he would have, of his own volition, told the interviewing officer during the AI, that he had cards at home

but they could not now be found. In our view this is further evidence of the Appellant embellishing his level of political interest and involvement in Turkey. Whilst it might be said that this point was not put to the Appellant during the hearing, it is nonetheless the case that the SSHD has long disputed the Appellant's claim to be a BDP/HDP member (see para. 39 of the RFRL) and the difficulties in the evidence about the Appellant's membership and access to membership cards was ventured by the Appellant himself in the 15 July 2019 letter. We therefore consider that there is no unfairness caused to the Appellant by the Tribunal grappling with the evidential difficulties that he has already highlighted and attempted to explain.

The Appellant's activities in the UK

70. We should also record that we have carefully considered, in the round, the additional evidence relating to the Appellant's activities in the UK, see for instance pages 23-34 of the current Appellant's bundle. These consist of:

    a. A letter from the Kurdish Community Centre in Wales (dated 2 September 2019), as well as a membership card;

    b. A letter from the Kurdish People's Democratic Assembly in Britain (dated 15 August 2019);

    c. Pictures of the Appellant in the Kurdish Community centre in London; as well as from the march past the BBC in London in relation to the presence of ISIS in Rojova (13 October 2019): he also identified himself holding the corner of a banner (page 29) requesting that the UK government stop supporting the Turkish state and ISIS – there is a picture of the Appellant holding a placard accusing the Turkish state of being a murderer (page 33).

71. Whilst we note that the Appellant's evidence at para. 10 of the 30 August 2019 witness statement is that he was detained on the last two occasions because he was part of HDP corteges, we also note that these were not political events (Qs 81 & 89 of the AIR) and were very large gatherings of people.

72. We have no doubt that the Appellant has interest in his Kurdish cultural identity but we, for the reasons we have laid out, are unable to accept that this provides material support for the Appellant's claim that he was a member of HDP (or otherwise involved with the party) in Turkey as claimed bearing in mind the problems with the evidence which we have identified.

The claim to ill-treatment and ongoing adverse interest – conclusions

73. We therefore reject the Appellant's claim that he was subject to detention and/or to serious ill-treatment in March 2016 and May 2017 as claimed, because of our overall concerns about the Appellant's reliability as a witness on these issues. We consider that the Appellant has engineered a falsified account as a response to the failure of his Ankara Agreement application in 2018.

74. We have also rejected the Appellant's claim that he is of ongoing adverse interest to the Turkish authorities, that the family home has been raided and that his brother was arrested and detained because of this.

RISK OF PERSECUTION/SERIOUS HARM ON RETURN TO TURKEY

75. Both parties have relied upon the Tribunal's Country Guidance decision of IK and we have had careful regard to it in reaching our decision both on credibility issues and the question of risk.

76. We note that the Tribunal in IK endorsed the earlier decision in A (Turkey) CG [2003] UKIAT 00034 at [46 & 47]:

> "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."

77. At para. 111 the AIT in IK found:

> "In saying this, we emphasise that 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. Thus, not all "detentions" will be of comparable significance in assessing risk. For example, in the light of the positive developments in Turkey in recent years, described above, there could be a considerable difference between the potential significance when evaluating present risk to a person who say was rounded up with many others in the course of Kurdish Nevroz celebrations and held overnight before being released without charge, and a person who was ill-treated along with others in his village in implementation of the clearance programme in the Southeast on the one hand, and a person who was specifically and individually targeted and detained for reasons inherent in his personal history and seriously ill treated over a more protracted period on the other hand. This comparison illustrates why we caution against a too simplistic approach to "headline" factors."

78. At para. 78, the AIT went on to establish that the starting point for a Tribunal's substantive consideration of risk on return is:

> "…whether the claimant would be at any real risk of persecution or breach of article 3 in his home area as a consequence of his material history there. If the answer to that is no, then the claim cannot normally succeed unless of course the risk arises from or is aggravated by other factors, such as his material activities abroad or in other parts of Turkey."

79. The AIT also went on to say:

> "116. We have already touched upon this issue in some of our previous observations. We have indicated that the proper course in assessing risk on return is normally to decide first whether an individual 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). It is however implicit in our conclusions so far that 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.
>
> 117. Some information about an individual is not reasonably likely to be apparent to anyone other than a few individuals in his home area. For example, a specific gendarme might have it in for an individual whom he considers to be a local "ne'er-do-well" but against whom there is no specific information. Also it is implausible, in the current climate of zero tolerance for torture that an official would wish to record or transfer information that could potentially lead to his prosecution for a criminal offence.
>
> 118. In general terms however we consider that one should proceed, when assessing the viability of internal relocation, on the basis that an individual's material history will in broad terms become known to the authorities at the airport and in his new area when he settles, either through registration with the local Mukhtar or if he comes to the attention for any reason of the police there. The issue is whether that record would be reasonably likely to lead to persecution outside his home area.
>
> 119. We have already identified some examples of the circumstances in which a person may have experienced serious ill-treatment in the past in areas of Turkey where the PKK was or now is active, but would not necessarily be at similar risk of such treatment elsewhere in Turkey where it is not, and where a different view of his history could be taken. They include examples of general intimidation by the authorities of the Kurdish population to discourage support for the PKK, or to clear whole villages. The evidence is that anything between some hundreds of thousands to some millions (depending on whose figures one uses) may have been displaced within Turkey as a consequence of this. However outside the areas of PKK activity there will not be the same perceived need to undertake such intimidation or clearances and the authorities within the receiving areas will be aware of the tactics that led to this mass migration, and will be able to assess an individual's record in the light of it. Similarly, a person who was included on Mr Dil's list of local "ne'er-do-wells", against whom there was no evidence of PKK involvement, but who ran the risk of being detained for questioning whenever an PKK incident occurred in his vicinity, would not be at a similar risk in another area where the PKK was not active and where such incidents were much less likely to occur. These are just some examples of why differential risk can arise in different areas of Turkey."

80. In assessing the nature of the differential risk in this case, we make the following findings: we accept that the Appellant has been previously detained on two occasions in 2009 and 2010 and that he was mistreated on those occasions. Therefore, on the basis of IK, there is likely to be some form of locally held record, the thrust of which would become known to those members of the

authorities dealing with the Appellant on return. However, we consider it important that these detentions were in 2009 and 2010 so some considerable time ago now and that the first detention (May 2009) was a May Day celebration which the Appellant was invited to by a trade union (para. 4 of the February 2019 witness statement) and that he was arrested with more than 100 other people (Q56 of the AIR) and that the second detention was in the context of a random stop by the police in the south-east after an attack on a local police station and was not specifically targeted at the Appellant.

81. We do not accept, for the reasons we have given, that since he left Turkey his name was given to the Turkish authorities such as to provoke an adverse interest in the Appellant. We also do not accept that the family home in Turkey was raided as a consequence of this new specific interest and we do not accept the Appellant's brother was detained as claimed.

82. We have also rejected the Appellant's claim to have been a member of the HDP and to have been actively involved with the party in recent years.

83. We also take into account that the Appellant is Alevi and that he left Turkey legally using his own passport and had no problems with the authorities when doing so.

84. So far then it is our view that, applying the general themes identified in A and endorsed in IK and making sure not to treat them as a checklist (as per [47] of IK), the Appellant has not established that this prior mistreatment in 2009 and 2010 would cause sufficient adverse interest from the Turkish authorities now to lead to a real risk of mistreatment upon return even where the first detention 12 years ago was in Istanbul itself.

Sur place activities in the UK

85. In considering the potential impact of the Appellant's sur place activities in the UK on the risk he faces upon return to Turkey we have directed ourselves to the binding decision of the Court of Appeal in TM (Zimbabwe) & Ors v Secretary of State for the Home Department [2010] EWCA Civ 916 ("TM"), at [25–29].

86. In this case we accept that the Appellant attended a rally in London about the ISIS presence in Rojova (Syria) in 2019 but we have little information about the lengths that the Turkish authorities go to in the UK to record and/or identify Turkish nationals who attend rallies away from Turkish embassy buildings. We do however note that there is some evidence in the FFM report (2019) that the Turkish police made video recordings of those entering HDP premises in the south-east (3.2.12) and, in applying TM (especially [27]), we have taken into account the general background evidence of the Turkish state's adverse interest in those who are deemed activists in Kurdish politics.

87. Overall, we are prepared to accept that there might be surveillance of political rallies in the UK which the Turkish authorities might consider contentious

however we have no evidence before us to show how effective the Turkish authorities are in connecting people seen at a rally in the UK to their identities/personal details in Turkey. On that basis we do not think it is reasonably likely that the Turkish authorities will know from their own surveillance that the appellant was at this specific rally. We also note that the Appellant has not credibly made out the claim that there have been raids on the family home in Turkey since the Appellant came to the UK in 2017 including after this demonstration in 2019.

88. However, we are aware of course that one of the aspects we must consider in respect of the application of IK is what questions the appellant is likely to be asked when he is returned. In that respect we would accept that there is a likelihood that the appellant would disclose that he was at a rally in 2019 in London and had involvement with Kurdish groups in the UK (the Kurdish Community Centre in Wales, the Kurdish People's Democratic Assembly in Britain). We would of course also observe that the appellant is not expected to lie, and if asked, which we think it is likely he would be, he would also have to report that his asylum claim was dismissed and that his claim to be politically active in Turkey, including being a member or supporter of the HDP, was not accepted as credible by the UK Tribunal.

89. Whilst Ms Panagiotopoulou has, in her skeleton argument at para. 12, relied upon extracts from the FFM 2019 which could be read as suggesting a possible heightened interest in those involved in the most informal forms of Kurdish politics (i.e. being caught leafletting) we also note that she did not argue that the current evidence should cause the UT to depart from IK, applying the Court of Appeal's guidance in SG (Iraq) v Secretary of State for the Home Department [2012] EWCA Civ 940, in particular at [47].

90. We have also directed ourselves to the Secretary of State's view of the overall position for HDP members (although this Appellant is not such a member) in the Country Policy Information Note, '*Turkey: Peoples' Democratic Party (HDP)*' Version 4.0 (March 2020) which was provided in the Appellant's evidence bundle (dated 17 June 2021):

> "2.4.15 In general, simply being a member or supporter of the HDP is not likely to result in a person facing persecution. However, the risk faced will depend on the person's profile and activities. When ordinary members of the HDP have come to the adverse attention of the authorities, this has generally been whilst participating in demonstrations and rallies, or for being vocal in criticising the government or the president or speaking out on Kurdish political issues, or for taking an active and visible interest in the court case of a relative who is a high-profile member of the HDP. Otherwise, an ordinary member is less likely to attract the adverse attention of the authorities on account of their political beliefs. It will be up to each person to demonstrate that their membership or support of the HDP (or their perceived membership or support) will have brought them to the adverse attention of the authorities to such an extent that they would experience a risk of serious harm or persecution on return.

> 2.4.16 If the person is a senior member of the HDP, for example, an MP, local officials, or elected mayor, or is an activist or has otherwise come to the adverse attention of the authorities because of suspected involvement with the PKK or support for autonomy for Kurdish people, they may be at risk of arrest under the government's interpretation of terrorism-related charges. In such cases, see the Country Policy and Information Note on Turkey: Kurdistan Workers' Party (PKK)."

And:

> "10.10.3 The HO FFT met with a number of interlocutors who mentioned the issue of torture. The representative from the Human Rights Association explained 'Articles 94 and 95 of the Turkish Penal Code prohibit torture. 'The interlocutor at the Ministry of Justice outlined that Turkey's policy of zero tolerance for any kinds of ill-treatment continues all the time. Andrew Gardner of Amnesty International also noted Turkey's 'zero tolerance for torture' policy, but also claimed that 'after the coup attitudes changed and it seems that in the months that followed authorities decided to revert to 'any means necessary.' He described a 'surge in the number of torture allegations [after the coup attempt], especially coming from perceived supporters of the Gulen movement' and that people 'were more likely to be tortured after the coup attempt than before because police officers and prison guards were even more confident that they wouldn't be brought to account for any abuses that they committed'. He also stated that the likelihood of the torture increases during political detention.' However, Mr Gardner also noted that, 'Torture isn't as bad as it was in the 90's and early 00's, but after a steep decline, cases are being reported again at a higher level than they were before the coup attempt.' He added that torture is not used in every prison or with every prisoner and stated that, 'Ill-treatment and systematic torture in Turkey is complicated. 'The Director of a Turkish organisation in the UK also believed that 'Torture takes place but not as widely as in the past. 'The executive from the Human Rights Association stated, 'First and foremost, it depends on the province or region and the reason why the person was detained' and that they 'cannot say that one person from HDP will be tortured and another HDP member will not be tortured; this depends on the person, so there can be no such presupposition."

91. Applying this to the Appellant, we have concluded that although the Appellant attended a demonstration in the UK in 2019 which was critical of the Turkish state the Appellant has failed to establish that there is a real risk of ill-treatment amounting to persecution or serious harm in this case.

92. In reaching that conclusion we have reminded ourselves that the Turkish authorities are likely to have some information about the Appellant including that he had been resident in Turkey and had not been detained or otherwise interacted with the authorities in Istanbul since 2009. We have also found that, through the course of interviewing the Appellant (which does involve a real risk of mistreatment at this stage of the returns process), it is reasonably likely that the Appellant will mention the demonstration in the UK in 2019 and his help with the integration into the UK of, presumably, Kurdish people (see the letters at pages 23 & 24 of the Appellant's bundle). We also find that the Turkish authorities will know, or will discover from the interview, that the Appellant's asylum claim was not accepted by the UK IAC and that it was not accepted that

he is a member of the HDP or was otherwise involved in HDP activities in Turkey.

93. In our view, bringing together the relatively varied strings of the background evidence, and bearing in mind that neither side argued that IK was no longer good Country Guidance, we have concluded that the Appellant would not be considered by the Turkish government to be a true political opponent nor a supporter or member of the HDP/PKK. We consider that it is reasonably likely that the Appellant would be considered an opportunist.

94. Even if we are wrong on that latter point, we nonetheless also take the view that the Appellant's attendance at one demonstration in the UK with a record of two historic detentions which were non-targeted arrests and adding to that that the Appellant's home area, in reality was Istanbul, and not the south-east, would not be sufficient to cause an adverse reaction from the Turkish authorities.

95. The Appellant has therefore failed to show at the lower standard that there is a real risk to him of persecution/serious harm on return to Turkey and therefore there would be no breach of the refugee convention or Article 2 or 3 of the ECHR in his removal to Turkey.

96. For the same reasons we also conclude that the Appellant has not established that he requires subsidiary protection under Article 15(b) of the Qualification Directive or that he qualifies for humanitarian protection under 339C of the Rules.

THE ARTICLE 8 CLAIM

97. The Article 8 ECHR appeal was not particularly pursued by Counsel but we should formally find that the Appellant has failed to establish that there would be very significant obstacles to his return to Turkey, applying 276ADE(1)(vi) of the Rules.

98. The Appellant has spent most of his life in Turkey, speaks the language and has formally worked for a number of years in Istanbul. He also has his family there and has no physical or mental health issues which would interfere materially with his reintegration.

99. In terms of the outside the Rules assessment and the consideration of exceptional circumstances as defined in GEN.3.2 of the Rules, we have concluded that there are no such circumstances and that removal would not cause undue harshness to the Appellant.

100. We are prepared to find that the Appellant has an Article 8(1) private life in the UK (albeit we were not furnished with a great deal of detail about his connections in the UK). Turning to Article 8(2) and the proportionality assessment we have applied s. 117B of NIAA 2002 and conclude that the Appellant does not speak English (s. 117B(2)); appears to be financially

independent (s. 117B(3)) although the effect of this provision is only neutral; and has resided in the UK, at the very least precariously since his arrival in 2017 and so on that basis we give little weight to his private life in the UK (s. 117B(5)).

101. We overall conclude that removal would not lead to a breach of Article 8(2) of the ECHR and that therefore removal is proportionate.

DECISION

The Appellant's refugee convention appeal is dismissed.

The Appellant's humanitarian protection appeal is dismissed.

The Appellant's Articles 2/3 ECHR appeals are dismissed.

The Appellant's Article 8 appeal is dismissed.

TO THE RESPONDENT

FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed Date 28 July 2021

Deputy Upper Tribunal Judge Jarvis

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email