



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12240/2019
PA/12239/2019

THE IMMIGRATION ACTS

Heard at Manchester
On 4 August 2021

Decision promulgated
On 14 September 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SS

GA

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Khan instructed by Legal Justice Solicitors.

For the Respondent: Mr Diwnycz a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellants, citizens of Turkey, born on 11 August 1981 (SS) and 28 September 1983 (GA), respectively appealed with permission a decision of a judge of the First-tier Tribunal who dismissed their appeals.

2. In a decision dated 18 February 2021 Upper Tribunal Judge Rintoul found material error of law and set that decision aside. The relevant paragraphs of Judge Rintoul's decision being:
 - "11. The First-tier Tribunal's decision is not easy to follow, not least as the judge does not appear to have directed himself in line with HJ (Iran). Further, there are no express findings as to the nature of the attacks on the first appellant, or findings about how (and why) they lived their lives in Turkey. Further, there is no analysis of how a finding of subjective fear or of past persecution is to be viewed through the lens of HJ (Iran). Not doing so means that there is no proper consideration at paragraph 339K of the Immigration Rules; there is no proper finding whether there had been prior persecution.
 12. It is worrying that insofar as the judge did direct himself as to the law [10], he did so by reference to a CPIN rather than relevant case law, or statute but that is not an error of law.
 13. Where the judge erred in law is in having concluded that there was no effective state protection, he failed properly to consider all the relevant evidence of the difficulties the appellants had faced, as set out in detail in their witness statements. There is no proper consideration of the difficulties that they would face on return. Rather, at [13] there is an analysis which does not properly take into account the difficulties they said they would face or why, from the population in general, given what had happened to them in the past in terms of the need to dress and behave in the workplace, in a manner in which is not just discrete but bordering on having to adopt a false identity. Similarly the analysis at [27] is lacking in proper detail.
 14. Further, the analysis based on HJ (Iran) is flawed [28], absent proper findings as to what had occurred in the past. For these reasons alone, I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
 15. In addition, I am satisfied that the analysis of the ability of family to trace the appellants is flawed, given the binding decision in IK. That aspect of the appeal will need to be considered again.
 16. The findings of credibility are preserved. It will be necessary on remaking to make findings as to the nature of the attack or attacks on the first appellant by his family and any other harassment directed at either appellant. It will be necessary also to make findings about the ability of family, if motivated, to find either appellant.
 17. It will also be necessary to make finding so far as relevant, the extent to which the appellants are at risk from family elsewhere in Turkey, whether there will be a sufficiency of protection for them. Equally, it will be necessary to address the test set out in HJ (Iran), albeit that it is accepted that the appellants are gay."
3. Following the making of a Transfer Order on 22 June 2021 the appeal comes before me, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

Preliminary issue – Expert evidence

4. The First-tier Tribunal had available to it a report written by of Dr Hasan Hafidh dated 31 January 2020. Dr Hafidh in the section of the report headed "EXPERTISE" writes:
 1. I am a Visiting Research Fellow at Kings College London and a Senior Teaching Fellow at the School of Oriental African Studies (SOAS) London. I am an interdisciplinary

researcher and my area of specialism is situated between Comparative Politics, International Relations and Middle Eastern Studies. I am not affiliated to organisations which could affect my objectivity as an Expert Witness. I have also worked as a Geopolitical Analyst on the Middle East Region for Wikistrat Consultancy producing reports and executive briefings for clients on some of the most pressing and timely topics in the region.

2. I have worked on several expert witness reports in the UK and also acquired expertise working with immigration legal firms in the US for asylum cases. My expertise ranges from Inter Communal/Sectarian relations in the Middle East, International and State Societal Relations, to extensive experience and on the ground fieldwork with NGOs and Civil Society and the Gulf, Islamist Movements, Militia Groups and Radicalisation, Conflict and Peacebuilding, Ethnic Minorities, Geopolitical Trends and Regional Security, Diaspora and Refugees, Human Rights issues and modes of governance in the Middle East.
3. I hold a PhD in Comparative Politics of the Gulf States from the University of Leeds. My PhD thesis is entitled: 'From Diwaniyyat to Youth Societies: Informal Political Spaces and Contentious Politics in Kuwait and Bahrain.' In the context of the Gulf region, I research the intersectional role that identified politics and faith play in the formation of communal identities, particularly when it comes to religious denominations. This focuses on the agency of sectarian identity and how political mobilisation based on denomination has an impact on the dynamic of state-societal relations within the Gulf region. I chose to explore this through the case studies of Bahrain and Kuwait, which have gained increasing attraction within media, academic and policy-making circles in recent years. In a post-Arab Spring context, I will take the scholarship forward by focusing on the socio-political activism of Bahraini and Saudi diaspora residing in the UK. This project will examine the contested visions of democracy and human rights between Gulf diaspora activists and foreign policy objectives as set out by the UK government.
4. This has led to working alongside leading scholars for a publication on "Civic Space and Sectarianism in GCC States: Dynamics of 'Informal' Civic Society in Kuwait and Bahrain beyond State Institutions," which is published in *Studies of Ethnicity and Nationalism (SEN)* Vol 19, Issue 1 (April 2019). This is in addition to my latest journal article on the processes of Securitisation and Othering of the Shia community in Bahrain and Pakistan, as well as the fast teaching experience I have accumulated through my positions as a Senior Teaching Fellow at SOAS, Kings College London and the University of Leeds. My book proposal has been accepted following keen interest from the series editor at Syracuse University Press (Professor Fred Lawson) to develop my book manuscript on "Informal Civic Society and Sectarianism in Bahrain and Kuwait'.
5. At [5] DR Hafidh sets out a full list of the lectures and seminars and course topics pertaining to Middle Eastern studies and comparative politics.
6. The First-tier Tribunal examined what weight could be given to this evidence, between [14 – 24] of the original decision, writing in that final paragraph:
 24. **Taking all of the above into account:** I am not persuaded that Dr Hafidh has the requisite expertise to give an expert opinion on the position of gay men in Turkey and I conclude his methodology is flawed, leading to flawed conclusions. There are concerns about the way the underlying sources and societal issues have been assessed. Therefore, I attach limited weight to the expert evidence. The report fails to rebut the related issues in the refusal. At its highest, the report is of limited assistance to the appellants.
7. To no doubt deal with these findings the appellant sought a report from a different expert, Volkan Yilmaz, PhD who in relation to his qualifications writes:
 1. Qualifications.

In the last six years, I worked as an Associate Professor of Social Policy and the Director of Social Policy Forum Research Centre at Bogazici University (Istanbul, Turkey). I took my undergraduate degrees in Political Science & International Relations and Sociology and completed my Master's degree in Modern Turkish History from Bogazici University. I hold a PhD in Politics from the University of Leeds. My mother tongue is Turkish. My areas of expertise include, as evidenced in my academic publications seen below, discrimination based on sexual orientation and gender identity and human rights with a particular focus on Turkey. With Dr Ipek Gocmen of Max Planck Institute for the Study of Societies (Cologne, Germany), we conducted the first nationwide online survey with a sample of 2,875 participants and focus group interviews with 139 participants living in 10 provinces to examine social and economic problems lesbian, gay, bisexual and transgender (LGBT) persons face in Turkey. Results of this comprehensive research were published in prestigious scientific journals and are available in English. Below you may find my relevant publications in English:

...

8. A point taken by Mr Diwnycz is that Volkan Yilmaz, PhD is not an expert in the field in which he purports to be able to provide an expert report which is relevant to the weight that can be placed upon the document.
9. In [MOJ & Ors \(Return to Mogadishu\) \(Rev 1\) \(CG\) \[2014\] UKUT 442 \(IAC\) \(3 October 2014\)](#) at [23-27] it is written:

The duties of the expert witness

23. We consider it appropriate to draw attention to this subject, given the prevalence and importance of expert evidence in Country Guidance cases. Mindful that substantial quantities of judicial ink have been spilled on this subject, we confine ourselves to highlighting and emphasising what appear to us to be amongst the most important considerations. The general principles are of some vintage. In National Justice CIA Naviera SA v Prudential Assurance Company Limited [1993] 2 Lloyd's Reports 68, Cresswell J stated, at pp 81 – 82:

“The duties and responsibilities of expert witnesses in civil cases include the following:

1. *Expert evidence presented to the court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation*
2. *An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise*
An expert witness in the High Court should never assume the role of an advocate ...
3. *An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion.*
4. *An expert witness should make it clear when a particular question or issue falls outside his expertise.*
5. *If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one. In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report*
6. *If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report, or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the Court.”*

This code was duly approved by the Court of Appeal: see [1995] 1 Lloyd's Reports 455, at p496. It has been considered in a series of subsequent report cases: see, for example, Vernon v Bosley (No 2) [1997] 1 All ER 577, at page 601. In the latter case, Evans LJ stated, at page 603:

"... Expert witnesses are armed with the court's readiness to receive the expert evidence which it needs in order to reach a fully informed decision, whatever the nature of the topic may be. But their evidence ceases to be useful, and it may become counter-productive, when it is not marshalled by reference to the issues in the particular case and kept within the limits so fixed."

Judicial condemnation of an expert who does not appreciate his responsibilities is far from uncommon: see, for example, Stevens v Gullis [2000] 1 All ER 527, where Lord Woolf MR at pp.532-533 stated that the expert in question had:

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"... demonstrated by his conduct that he had no conception of the requirements placed upon an expert under the CPR

It is now clear from the rules that, in addition to the duty which an expert owes to a party, he is also under a duty to the court."

24. The requirements of CPR 31 also featured in Lucas v Barking Hospitals NHS Trust [2003] EWCA Civ 1102, where the emphasis was on CPR 31 and CPR 35. These provide (*inter alia*) that:

- (i) a party may apply for an order for inspection of any document mentioned in an expert's report which has not already been disclosed,
- (ii) every expert's report must state the substance of all material instructions, whether written or oral, on the basis of which the report was written, and
- (iii) such instructions are not privileged against disclosure.

Laws LJ made the following noteworthy observation:

"[42] As it seems to me the key to this case Is the imperative of transparency, a general theme of the CPR but here specifically applied to the deployment of experts' reports. Thus the aim of rule 35.10(3) and (4) is broadly to ensure that the factual basis on which the expert has prepared his report is patent."

25. Thus in the contemporary era the subject of expert evidence and experts' reports is heavily regulated. The principles, rules and criteria highlighted above are of general application. They apply to experts giving evidence at every tier of the legal system. In the specific sphere of the Upper Tribunal (Immigration and Asylum Chamber), these standards apply fully, without any qualification. They are reflected in the Senior President's Practice Direction No 10 (2010) which, in paragraph 10, lays particular emphasis on a series of duties. We summarise these duties thus:

- (i) to provide information and express opinions independently, uninfluenced by the litigation;
- (ii) to consider all material facts, including those which might detract from the expert witness' opinion ;
- (iii) to be objective and unbiased;
- (iv) to avoid trespass into the prohibited territory of advocacy;
- (v) to be fully informed;
- (vi) to act within the confines of the witness's area of expertise; and
- (vii) to modify, or abandon one's view, where appropriate.

26. In the realm of expert testimony, important duties are also imposed on legal practitioners. These too feature in the aforementioned Practice Direction. These duties may be summarised thus:

- (i) to ensure that the expert is equipped with all relevant information and materials, which will include information and materials adverse to the client's case;
- (ii) to vouchsafe that the expert is fully versed in the duties rehearsed above;
- (iii) to communicate, promptly, any alterations in the expert's opinion to the other parties and the Tribunal, and
- (iv) to ensure full compliance with the aforementioned Practice Statement, any other relevant Practice Statement, any relevant Guidance Note, all material requirements of the Rules and all case management directions and orders of the Tribunal.

These duties, also unqualified in nature, are a reflection of the bond between Bench and Representatives which features throughout the common law world.

27. The interface between the role of the expert witness and the duty of the Court or Tribunal features in the following passage in the judgment of Wilson J in Mibanga v Secretary of State for the Home Department [2005], EWHC 367:

"[24] *It seems to me to be axiomatic that a fact finder must not reach his or her conclusion before surveying all the evidence relevant thereto....*

The Secretary of State argues that decisions as to the credibility of an account are to be taken by the judicial fact finder and that, in their reports, experts, whether in relation to medical matters or in relation to in-country circumstances, cannot usurp the fact finder's function in assessing credibility. I agree. What, however, they can offer is a factual context in which it may be necessary for the fact finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them.

It seems to me that a proper fact finding enquiry involves explanation as to the reason for which an expert view is rejected and indeed placed beyond the spectrum of views which could reasonably be held."

To this we would add that, as the hearing of the present appeals demonstrated, this Tribunal will always pay close attention to the expert's research; the availability of empirical data or other information bearing on the expert's views; the quality and reliability of such material; whether the expert has taken such material into account; the expert's willingness to modify or withdraw certain views or conclusions where other evidence, or expert opinion, suggests that this is appropriate; and the attitude of the expert, which will include his willingness to engage with the Tribunal. This is not designed to be an exhaustive list.

10. In PP (female headed household; expert duties) Sri Lanka [2017] UKUT 117 (IAC) (06 February 2017) it was found, inter alia, that experts' reports and evidence must comply fully and strictly with the Senior President of Tribunal's Practice Direction and that the methodology of every expert witness should always be patent on the face of the report.

11. Paragraph 10 of the Senior President of Tribunal's Practice Direction reads:

10. Expert evidence

10.1. A party who instructs an expert must provide clear and precise instructions to the expert, together with all relevant information concerning the nature of the appellant's case, including the appellant's immigration history, the reasons why the appellant's claim or application has been refused by the respondent and copies of any relevant previous reports prepared in respect of the appellant.

10.2. It is the duty of an expert to help the Tribunal on matters within the expert's own expertise. This duty is paramount and overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid.

10.3. Expert evidence should be the independent product of the expert uninfluenced by the pressures of litigation.

10.4. An expert should assist the Tribunal by providing objective, unbiased opinion on matters within his or her expertise, and should not assume the role of an advocate.

10.5. An expert should consider all material facts, including those which might detract from his or her opinion.

10.6. An expert should make it clear:

- (a) when a question or issue falls outside his or her expertise; and
- (b) when the expert is not able to reach a definite opinion, for example because of insufficient information.

10.7. If, after producing a report, an expert changes his or her view on any material matter, that change of view should be communicated to the parties without delay, and when appropriate to the Tribunal.

10.8. An expert's report should be addressed to the Tribunal and not to the party from whom the expert has received instructions.

10.9. An expert's report must:

- (a) give details of the expert's qualifications;
- (b) give details of any literature or other material which the expert has relied on in making the report;
- (c) contain a statement setting out the substance of all facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;
- (d) make clear which of the facts stated in the report are within the expert's own knowledge;
- (e) say who carried out any examination, measurement or other procedure which the expert has used for the report, give the qualifications of that person, and say whether or not the procedure has been carried out under the expert's supervision;
- (f) where there is a range of opinion on the matters dealt with in the report: (i) summarise the range of opinion, so far as reasonably practicable, and (ii) give reasons for the expert's own opinion;
- (g) contain a summary of the conclusions reached;
- (h) if the expert is not able to give an opinion without qualification, state the qualification; and (i) contain a statement that the expert understands his or her duty to the Tribunal, and has complied and will continue to comply with that duty.

10.10. An expert's report must be verified by a Statement of Truth as well as containing the statements required in paragraph 10.9(h) and (i).

10.11. The form of the Statement of Truth is as follows: "I confirm that insofar as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion".

10.12. The instructions referred to in paragraph 10.9(c) are not protected by privilege but cross-examination of the expert on the contents of the instructions will not be allowed unless the Tribunal permits it (or unless the party who gave the instructions consents to it). Before it gives permission, the Tribunal must be satisfied that there are reasonable grounds to consider that the statement in the report or the substance of the instructions is inaccurate or incomplete. If the Tribunal is so satisfied, it will allow the cross-examination where it appears to be in the interests of justice to do so.

10.13. In this Practice Direction: “appellant” means the party who is or was the appellant before the First-tier Tribunal; and “respondent” means the party who is or was the respondent before the First-tier Tribunal.

12. The report from Volkan Yilmaz contains details of his qualifications and as noted above, the documents provided, questions asked, the expert’s opinion by reference to footnotes referring to relevant texts, a summary of the conclusions, a heading setting out in more detail the literature relied upon in preparing the report, and the signed declaration in the following terms *“I confirm that insofar as the facts stated in my report are within my own knowledge, I have made clear which they are and I believe them to be true and that the opinions I have expressed represent my true and complete professional opinion.”*. It is noted that the report is not written to the Tribunal, but rather to those who provided the instructions, i.e. the appellant’s solicitors, contrary to the Practice Direction.
13. As the Tribunal were not drawn to any other specific failure to comply with the Practice Direction and I find that even if the Secretary of State does not recognise Mr Yilmaz as an expert, partly by reference to the fact he had not been quoted in any other decisions to prove his expertise, that it is appropriate for weight to be placed upon his report submitted on the appellant’s behalf. Mr Yilmaz has relevant expertise which is the foundation for the view expressed in the report, clear knowledge of and exposure to society within Turkey where he is based, and that it is appropriate to consider his opinion in the round, together with the other evidence made available to the Upper Tribunal.

Discussion

14. The single question in this appeal is: do the appellants have a well-founded fear of being persecuted if returned to Turkey for a reason specified in Article 1A(2) of the Refugee Convention.
15. Article 1A(2) of the Refugee Convention as amended defines a refugee as any person who:

“... owing to 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 his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country...”
16. Article 9 of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (“the Directive”) defines persecution in the following terms:

“Article 9 Acts of persecution

 1. Acts of persecution within the meaning of article 1 A of the Geneva Convention must:
 - (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European

Convention for the Protection of Human Rights and Fundamental Freedoms; or

- (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).
2. Acts of persecution as qualified in paragraph 1, can, *inter alia*, take the form of:
- (a) acts of physical or mental violence, including acts of sexual violence;
 - (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
 - (c) prosecution or punishment, which is disproportionate or discriminatory;
 - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
 - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);
 - (f) acts of a gender-specific or child-specific nature.
17. There must be a connection between the reasons mentioned in Article 10 and the acts of persecution.
33. In HJ (Iran) [2010] UKSC 31 the Supreme Court recognised a distinction between a situation where a gay man conceals his sexual orientation because, in part at least, he fears that he will be persecuted if he lives openly as a gay man and a situation where a gay man chooses to live in a way that does not disclose his sexual orientation. That requires the court or tribunal to ask why a gay man would conceal his sexual orientation on his return to his country of origin. If he were to do that in reaction to "family or social pressures" (per Lord Hope at paragraph 22) or "social pressures" (per Lord Rodger at paragraph 82) that would not amount to persecution and the Refugee Convention would not offer protection against return to the country of nationality.
34. In the light of that, Lord Rodger gave the following guidance to tribunals on the approach to be adopted at paragraph 82 of his judgment in *HJ (Iran)*:
- "The approach to be followed by tribunals
82. When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality. If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant's country of nationality. If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country. If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution—even if he could avoid the risk by living "discreetly". If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and

so avoid persecution, it must go on to ask itself *why* he would do so. If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e.g. not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay. If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect – his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him."

18. As noted above, the first of the HJ (Iran) questions is answered in the positive.
19. The second question requires an assessment of whether a gay person who lived openly would be liable to persecution in Turkey.
20. The appellant's place reliance upon a number of documents, including a letter from a Member of the Istanbul Bar Association dated 19 July 2021, in which it is written:

"I have been working as a human rights lawyer (LGBTI+ rights-focused) in Turkey for years. Human rights lawyers in Turkey must represent their clients against the State and society against their own families. Unfortunately, there is no law to protect LGBTI+ individuals against civilian attacks or hate crimes. Moreover, the government has targeted the LGBTI+ community by accusing them of deteriorating the Turkish family structure. Recent developments regarding the withdrawal from the Istanbul Convention, (the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence) has shown the government's approach towards the LGBTI+ community. For instance, Fahrettin Altun, President Erdogan's communication director, delegated homosexuality as an 'ugliness' and argued that families were targeted with propaganda promoting tolerance for LGBTI+ people. The Interior Minister, Suleyman Soyly, who is also the head of the police department, committed hate speech by saying "LGBT perverts" and whose tweets were restricted, also said "LGBT is a perversion. Are there things like LGBT in our past? Is there something that we do not know? These are things that happen in the West."

For more than five years, being an LGBTI+ has been tried to criminalise by the government itself, which is supposed to protect sexual minorities under the international treaties Turkey ratified. However, the government, on the contrary, makes LGBTI+ individuals target by stigmatising us and committing hate speech towards LGBTI+ people.

There are recorded violent incidents, including honour killings, showing families treatment towards their LGBTI+ children. Many LGBTI+ individuals were restricted to go out or meeting with other people by their parents. Even though they were over 18 years old, and there were crimes, the police did nothing since Law No. 6284 to Protect Family and Prevent Violence Against Women only focused on protecting the family. The law is not sufficient and efficient even against violence against women.

As understood, homosexuality is widely a taboo subject in Turkey. Homophobia and transphobia are at high rates among Turkish society. According to a survey conducted by the Kadir Has University in Istanbul in 2018, 55.3% of people would not want a homosexual neighbour. Also, according to the 2020 Pew Research, only 25% of the Turks said homosexuality

should be accepted by society, with 57% opposing it. LGBTI+ people face beatings, robberies, police harassment and murder. According to A transgender Europe, Turkey has the highest rate of hate murders.

For those crimes committed against LGBTI+ people, the response by the authorities is far from being inadequate, since the police rely on their moral codes instead of the law and regulations that already do not provide shelter for LGBTI+ people. The Turkish State, which already endorses homophobia and transphobia, never protects the LGBTI+ community against attacks.

While LGBTI+ individuals tried to flee from their hometown and their parents, the police aided them in finding their children, although the children are under threat. Ahmet Yildiz, one of the victims of honour killings, was found by his family despite his relocation. The defendant father, the murder of Ahmet Yildiz, has not been found for 13 years because he could leave Turkey despite the travel ban, which is impossible without the police help.

A recent incident also showed this collaboration between the police and homophobic parents. One of the former soldiers imprisoned his son because he learnt he was gay. Despite all denunciation made by CSO's and activists and complaints made by the gay son, the police did nothing to save and liberate the gay adult. Still, in Turkey, if someone has an official duty, such as being a police or soldiers, they have certain impunity and power. Since they have the authority to reach all people's data, they can reach them out quickly, even though it means misconduct in office.

I sincerely know that the hazardous circumstances for LGBTI+ people, especially those who have please parents. In the circumstances, sending back someone to Turkey is not safe because of the genuine threat to LGBTI+ individuals.

Sincerely yours"

21. In relation to the question of whether the appellants can safely relocate in Turkey Volkan Yilmaz writes:

"The ability of your clients to safely relocate in Turkey is uncertain for two reasons, namely the receipt of repetitive death threats and the absence of effective state protection, which must be considered in tandem with each other. First, it is evident in the screenshots of the text messages that one of your clients (Mr SS) received from his father and his cousin include death threats (and the threat of "corrective" rape by the father). Although one could consider these threats as immediate and transitory reactions that would unlikely lead to these acts, the father's repetitive mention of these threats in two different messages sent five days apart and the cousins assurance of each threat twice eight days apart increases the likelihood that such threats might materialise if your clients relocate in Turkey. The characteristic of threateners in your client's case is in line with that of landmark anti-gay hate crime cases of Ahmet Yildiz and Rosin Cicek, which demonstrate that male family members are joint perpetrators of these crimes.

Second, and more importantly, there is no reliable evidence that leads me to conclude that your clients could effectively rely on state protection in the face of death threats originating from Mr SS family members, should they relocate to Turkey. This is especially the case for two reasons: increasingly over hostility of the government towards gays and the erosion of the rule of law.

Turkey has moved from being a country that is relatively safe for gays in the 2000s and early 2010s to one that lost this character due to government led anti-gay campaign started in the 2020s. Concerning the political and legal context in the 2010s, Turkey appeared a relatively safe place for gays in the first period as it stood out as a Muslim majority country where homosexuality is not a criminal offence and the flourishing gay rights advocacy started to raise awareness among the general public. In such context, with Dr Ipek Gocmen, we conducted the most comprehensive research in 2014 on social and economic problems that LGBT persons facing Turkey in the following domains: access to justice, education, education, employment, healthcare and housing. The research included a quantitative component- a nationwide online survey of 2875 participants and a quantitative component - 14 focus group interviews with 139 respondents in 10 cities. At the time, we found that LGBT's report systematic cases of perceived

discrimination in the above mentioned domains. However, the overwhelming majority of respondents – nine out of ten - do not turn these cases of perceived discrimination into a legal complaint. According to the survey results, only 16.5 per cent of those who filed a legal complaint reported that they had a satisfactory result from the legal process. Reasons for not filing a legal complaint include the following: (1) filing a complaint will not change anything (50.7%); (2) I am afraid of being outed without my consent (49.3%); (3) these things happen all the time (36.9%); and (4) I did not know where and to whom to file a complaint (27.5%). We concluded that these results are sufficient to represent the culture of impunity in Turkey with respect to sexual orientation discrimination and the Turkish legal systems failure in effectively serving LGBT persons. While these results demonstrated that there was room for improvement at the time, I would like to emphasise that the current situation is considerably worse for gay men than the one we previously examined.

Turkey's gay rights record has never been perfect, but it is deteriorating at a rapid pace in recent years and openly gay men constitute a particularly vulnerable group in such context. The official position of the Turkish government provides clear evidence for this claim. Turkey's 2018 self assessment of its implementation of the Committee of Ministers' (of the Council of Europe) Recommendation on measures to combat discrimination on grounds of sexual orientation and gender identity reports that the country does not comply with four out of five indicators for tackling hate crimes.

As part of the same self-assessment, Turkish authorities declare that the country does not take any official steps to combat hate speech against LGBT persons. On the contrary, the President and the Minister of Interior openly target lesbian, gay, bisexual and transgender (LGBT) persons in their public speeches. In addition, the President of Religious Affairs openly accuses gay persons of being a major threat to younger generations and the main cause of HIV prevalence. This high level anti-gay rhetoric with religious references seems to reflect in the text messages that the father sent to Mr SS when he wrote "God damn you! Indeed, God cursed you so that you became a faggot. I can't even go to the mosque because of you. You disgrace to me. You deserve to be killed. I will kill you and become felicide." These statements go beyond common phrases used in Turkish to express confusion and a transitory state of anger. Instead, they are statements that add up an expression of a credible threat that is encouraged by a politically hostile environment. This dangerous coming together of late and high level anti-gay rhetoric might be providing a breeding ground for anti-gay hate crimes.

In a country where rule of law reigns, even the presence of a high level anti-gay campaign might not automatically imply that effective state protection would be lacking for your clients. Nevertheless, in the World Justice Project Rule of Law Index, Turkey's fundamental rights score decreased from 0.42 in 2010 to 0.33. The current standing of Turkey in terms of fundamental rights places the country in 123rd place (just above Venezuela and below Bangladesh), I would like to note that this score is estimated based on the following sub- factors: Equal treatment and absence of discrimination, the right to live and security of the person is effectively guaranteed, due process of the law and rights of the accused, freedom of opinion and expression is effectively guaranteed, freedom of belief and religion is effectively guaranteed, freedom from arbitrary interference with privacy is effectively guaranteed, freedom of assembly and association is effectively guaranteed, fundamental labour rights are effectively guaranteed. If these sub- factors would be adjusted to gay persons in the current context, based on the reasons stated in previous paragraphs, I would expect that Turkey score would be lower.

One evidence of the particular vulnerability of gay men in the context of the erosion of the rule of law is the recent decision of the Turkish President to withdraw unilaterally from the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) that took effect on 1 July 2021. The official stated reason behind Turkey's withdrawal was that the Convention promotes and legitimises homosexuality, which is deemed in contradiction with Turkish family values. While the government tries to assure the general public that the withdrawal decision would not negatively impact combating violence against (cisgender, and heterosexual) women, no similar statement was made concerning LGBT persons. On the contrary, a reference to sexual orientation in Istanbul Convention was presented

by government authorities as a sufficient reason to withdraw from it. The withdrawal decision and the stated rationale, therefore, shows that Turkish authorities have a strong will to relieve themselves from the positive obligation to protect LGBT persons from violence inflicted by non-state actors. This strong official position on disregarding homophobic violence casts doubt on any possibility of the presence of effective state protection for gays.”

22. In his summary at [5] of the report, the author writes:

“Based on the overall assessment I provided above, this report shows that in my professional opinion the current political, legal and law enforcement environment in Turkey does not allow safe relocation of your clients in Turkey. I have no evidence to conclude that they will receive effective state protection, especially in the face of death threats from Mr SS’ father and cousin. Having reviewed the case and relevant evidence, I contend that there are objective grounds for your clients subjective fear of persecution and the risk of ill-treatment is high had they been relocated in Turkey.”

23. A number of news articles have been provided by the appellants referring to police crackdowns on LGBT rallies, such as that in Istanbul in 2016, albeit one article indicates this was as a result of the state of emergency declared by the government at the time of the attempted coup which banned public gatherings, but also an article headed Civil Rights Defenders (Sweden), Turkey bans LGBT Activism to “Protect Public Security”, 23 November 2017, reporting that Turkey has banned all events organised by LGBT organisations in Ankara, citing public “sensitivities” and “security” and labelling LGBT activism as a threat to the Turkish society and its values. Other articles provided support the findings of the country expert in relation to attacks on members of the LGBT community and lack of effective state protection.

24. Problems having been experienced by the appellants, particularly SS the credibility of which has not been challenged. Copies of the text messages together with translations were provided in a supplementary bundle for the appeal hearing listed on 5 February 2020 before the First-tier Tribunal. There are two from the appellant’s father which read:

25th January, Friday 23:59

I would rather not have a son like you. God damn you. God has already damned you, so you became a fag. I cannot even go to the mosque because of you. You disgrace me. You deserve death. I am going to kill you. I am going to be a filicide you son of a bitch.

Your mother and I cannot go out in public. I am going to kill you. I don’t have a son like you.

Son of a bitch. Fuck your mother and wife. Dishonoured fag who gets his ass fucked. I am going to fuck you first when I get you, fag.

30th January Wednesday 20:51

My god-damned fag son.

I am going to kill you with my hands when I get you. You dishonoured us, shit, son of a bitch.

I would rather not have a son like you. You are going to make me a father killer. If only I get you.

25. There are then two messages said to be written by a cousin in the following terms:

22nd January Tuesday 22:10

[SS] what a disgrace and dishonour. What have you done man!!! My uncle got mad. He says, "My son is a fag. I have fed a devil in my house until now. I gave him my father's name. He disgraced us. How will I go to the mosque and face them?" Be aware that what you have done will not be left without penalty. This is not a joke. Honour is everything. Of course you are going to come here fag. We are going to shoot on your brains out. You dishonoured dickhead.

30th January Wednesday 20:59

You cock knocker fag. Don't think that we have forgotten you. You have turned people upside down. Fuck your character, fag. My uncle is not joking!

26. There are two issues that arise from this evidence the first is the real risk of facing discrimination within society in Turkey if the appellants are identified as being in a same-sex relationship. Whether such discrimination is sufficient to amount to persecution is a question of fact but persecution based upon discrimination is a fundamental foundation of the Refugee Convention. The report of the expert reflects the deteriorating situation for members of the LGBT community in Turkey, which appears, at this stage, to be only heading in one direction. Whilst the statistics indicate an objection by some to having a LGBT neighbour does not apply to all, it does to a slight majority.
27. There is also an issue raised in the country guidance case of IK (Returnees Records, IFA) [2004] UKIAT 312 regarding the procedure on return. There is nothing to indicate either appellant is of interest to the Turkish state, per se, but within the decision is his written at the end of [83] and [84]:

If a person faces non-routine investigation what should he be expected to say when questioned and what further information is reasonably likely to be accessed in this process?

 84. The CIPU Report at 6.242 describes the nature of the questioning at the airport police station as mostly involving:

"Establishment or checking personal details; reasons and period of exit from Turkey; reason for the asylum application; reasons for any refusal of the asylum application; any criminal record and past record at home and abroad including drug offences; possible contact with illegal organisations abroad. However, if there are no suspicions, as a rule after an average of 6 to 9 hours they are released."
28. In light of the attitude by the authorities, including the police to members of the LGBT community, it cannot be ruled out that the appellants may experience difficulties including ill-treatment at the hands of the authorities at the point of return. They cannot be expected to lie about the reasons they claimed asylum, which reflects a genuinely held aspect of their personalities solely for the purposes of avoiding any persecution. To do so for that reasons contravenes the HJ (Iran) principal.
29. In addition to societal issues SS is also faced with a real risk from his father and cousin, his father clearly viewing his actions as having brought dishonour upon the family, which justifies his murder. That such threats have been found to be credible is the unique feature of this case.
30. At this stage it is also necessary to consider the ability of family members to locate SS if he is returned to Turkey. It is a relevant factor in this appeal that the

- cousin is a policeman in Turkey. SS also asserts that his father will utilise contacts he has with the police to find him.
31. SS also asserts that as they could not live in their home area they would have to relocate to a different area of Turkey, but that in order to rent an apartment, they must register themselves with the local Muhtar and provide their national identity number, full name and information, without which they could not obtain rental, gas, or electricity. SS states that all such information is automatically listed with the government and that anybody could access that information.
 32. Even though it was submitted by Mr Diwnycz that the appellants have passports and identity cards and will therefore not need to apply for further duplicates, this does not provide an answer to the fact that their personal details have to be provided as part of day-to-day life within Turkey.
 33. So far as accessing such information is concerned, a further report provided by the appellants in their bundle refers to the requirement under Civil Service Law No. 5490 for all Turkish citizens to have an identity number which cannot be changed. That number will be used as the basis for all processes with institutions and other legally identities, including change of dwelling, address, treatment in hospitals, tax transactions, etc. A system known as the Identity Sharing System, Address Registration System and Central Civil Administration System was created in order to carry out these processes online, via a central database.
 34. It was accepted by Mr Diwnycz that such evidence can be accessed by family members, especially those in the police, as noted above. The argument that there was no reason for such enquiries to be made fails to take account of the evidence that the authorities themselves may advise SS and GA's parents of their return in light of the strength of ill feeling expressed in the text messages and anti-LGBTI+ views or that an ad hoc enquiry could reveal that they have returned and their location. The degree of hatred expressed by SS' father and desire to take action to protect the family honour creates a credible risk that he will do what he can to find SS if at all possible.
 35. It is clear that what is proposed by SS' father and cousin clearly crosses the threshold of persecution and as it is based upon discovery of his sexual identity it will be for a Convention reason as a member of a Particular Social Group.
 36. I find that the appellants have established on the evidence that the answer to the second question is that SS faces a real risk of persecution from family members sufficient to amount to persecution in Turkey and that both SS and GA will face discrimination that might cross the necessary threshold from others in society at this present time as a result of their sexual identity as gay men, especially if they return to Turkey to live in same-sex households with each other as they are entitled to do.
 37. As the threat from family relates to SS' home area they will be required to relocate elsewhere. The question as always is whether it is reasonable all the circumstances to expect them to do so. This gives rise to the third question set out in HJ (Iran).

38. The third question requires the tribunal to consider what SS and GA would do if returned to Turkey. Their claim that they would have to go into hiding is credible. It is also clear that they may not be able to live their lives openly as members of the LGBT community in light of the risk attacks and open discrimination against such members within Turkey, from which I find the Turkish state offers no protection on the specific facts of this appeal.
39. An issue arose during the course of the hearing following an answer by the appellants that they do not live openly (although they share accommodation) in Oldham. Ms Khan referred to the fact that this is a predominantly Muslim area, which may in part explain the reticence of SS and GA to live openly gay lives. It must also be borne in mind that what they do in the UK, where they would not face state persecution or permitted discrimination, whilst a factor to be taken into account when assessing how they would act on return to Turkey, is not the determinative issue. The evidence of both appellants is that they would like to live normal lives which would require them to live openly in Turkey together. In the UK they have lived as a gay couple which the expert indicates if duplicated in Turkey may of its own give rise to a real risk of harm on return from which the state will offer no protection.
40. The position of the Secretary of State set out in the CPIN: Turkey, Sexual Orientation and Gender Identity, June 2017, is summarised as being:
- Policy summary
- 3.1.1 Although same-sex sexual activity is legal in Turkey, there have been reports of police harassment, occasional violence and interference in the lives of some LGBT persons – particularly sex workers – and LGBT organisations. LGBT persons may also face discrimination in accessing services, including health and education.
- 3.1.2 However, not all members of the LGBT community experience the same level of ill-treatment by state actors. In general the treatment of LGBT persons by the state is not sufficiently serious by its nature and repetition as to reach the threshold of persecution or serious harm.
- 3.1.3 Turkey is a conservative society where homophobic attitudes persist. LGBT persons may experience societal discrimination, stigmatization, intimidation and occasional violence by non-state actors. In general the level of discrimination is not such that it will reach the high level of being persecutory or otherwise inhuman or degrading treatment. Personal circumstances may, however, place some LGBT persons at risk from non-state actors.
- 3.1.4 State protection is likely to be limited as there are shortcomings in the way that such crimes are investigated and prosecuted.
- 3.1.5 Internal relocation is likely to be possible where a person experiences local hostility but will not be an option if it depends on the person concealing their sexual orientation and/or gender identity in the proposed new location for fear of persecution.
41. The first thing to notice this document is over four years old with a more up-to-date position being reflected in the evidence set out above.
42. I find the appellants claim that they would wish to live openly, but that they would not feel able to do so if returned to Turkey as a result of the real risk they face of persecution, is credible. Their past modifications in relation to the need to dress and behave in the workplace in a manner which is discrete would have to continue on return which, as identified by Judge Rintoul, is bordering on having to adopt a false identity solely for the purposes of avoiding persecution.

- 43. I accept that societal pressures may not amount to persecution per se and that lower levels of discrimination may not be sufficient to amount to persecution, but it is clear that there is an increasing real risk of persecution in light of the current prevailing attitude in Turkey and a current credible real risk in light of the attitude of SS' family members amounting to conduct sufficiently serious by its nature or repetition as to constitute a severe violation of the appellants basic human rights.
- 44. I do not find in this case that it is made out that living discretely is something SS and GA would choose to do due to social pressures or for reasons that would not engage the Refugee Convention.
- 45. I therefore conclude on the basis of the evidence that it has been established to lower standard that the appellants cannot return to their home area as a result of a real risk of persecution through the killing of SS by his family members, and GA by association, for which there is no sufficiency of protection. I find it has not been shown to be reasonable in all the circumstances for the appellants to relocate elsewhere within Turkey where they will have to act discreetly to avoid persecution in light of the expert evidence. I make such finding applied lower standard applicable.
- 46. In accordance with the HJ (Iran) principles and on that basis, I allow the appeals of both appellants. It is not an answer to the question to suggest that SS should be granted refugee status but GA returned, as the determinative factor is a threat to SS from his family, as that will both be unreasonable and a breach of Article 8 ECHR.

Decision

47. I allow the appeals.

Anonymity.

48. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 11 August 2021