



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/11139/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9<sup>th</sup> January 2020**

**Decision & Reasons Promulgated  
On 20<sup>th</sup> February 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**'SD'  
(ANONYMITY DIRECTION CONTINUED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

*Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.*

**Representation:**

For the appellant: Ms N Nnamani, Counsel, instructed by Howe & Co Solicitors

For the respondent: Ms R Bassi, Senior Home Office Presenting Officer

**DECISION AND REASONS**

## *Background*

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of protection and human rights claim.
2. The appellant, a citizen of Turkey, sought leave to remain in the United Kingdom (the 'UK') on the basis of feared persecution as a result of alleged activities with the HDP. He claims to have been detained and tortured by the Turkish authorities before fleeing that country. The respondent refused his asylum and human rights claims in a decision dated 12 September 2018, going so far as to dispute his claimed Kurdish ethnicity (the 'Refusal Letter').
3. On 12 December 2018, First-tier Tribunal Judge Macdonald (the 'FtT') dismissed the appellant's appeal against the refusal of the appellant's protection and human rights claims. The FtT was critical of the appellant's credibility, both in terms of his answers given during asylum interviews and in oral evidence before the FtT.
4. The appellant appealed, on the basis that the FtT had ignored, in finding that he was not of Kurdish ethnic origin, the fact that his brother had been recognised as a refugee on the basis of being of Kurdish ethnic origin; the FtT had failed to make clear findings on the extent of the appellant's activities with the HDP; and had failed to consider and apply objective evidence, including the risk factors set out in the Country Guidance case of IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312.
5. This Tribunal set aside the FtT's decision in the error of law decision promulgated on 7 August 2019 and which is annexed to this remaking decision. There were no preserved findings of fact. Three errors in the FtT's decision were identified: the first was in relation to the question of how the FtT approached the appellant's claimed Kurdish ethnic origin, specifically in not considering available evidence in relation to his brother's accepted ethnicity; second, a lack of clear findings on which events or demonstrations the appellant attended, as a result of which he claimed to have suffered adverse interest; and third, in not adequately analysing the risk to the appellant on return, in the light of objective evidence.

## *The screening interview*

6. The appellant claimed asylum at a screening interview on 13 December 2016. During that interview, he claimed to have been a PKK fighter, who as a result of his fighting for the PKK, had been detained in prison and tortured. He also claimed to have been involved with the HDP party.

## *The substantive asylum interview*

7. The appellant attended a substantive asylum interview on 10 August 2018. The gist of his answers was that he was a Turkish national of Kurdish ethnic origin, who had been arrested and ill-treated twice. He had had a role in the HDP party taking collections and handing out leaflets. He had first been arrested in February 2014; and on the second occasion in 2015, two or three months before his arrival in the UK. He entered the UK in December 2016. He claimed that the journey from Turkey to the UK took two or three weeks but when confronted with the inconsistency in the dates, suggested that his 'mind was not in the right place'. The first occasion when he was arrested, he had attended a Newroz celebration on 1 October 2014. He was arrested the second time when attending a demonstration to commemorate the 'Roboski' massacre on 28 October 2015.
8. The appellant asserted that he normally spoke Kurdish but couldn't speak Kurdish as well as he had been able to, because it was forbidden to do so in Turkey, which was why he was answering questions in Turkish via a translator.

#### *The Respondent's refusal*

9. The respondent refused the appellant's application in a decision dated 12 September 2018. The respondent accepted that the appellant was a Turkish national but disputed that he was of Kurdish ethnic origin, regarding as inconsistent his claims to have normally spoken Kurdish, as opposed to then saying that he only spoke a few words. The respondent regarded it is reasonable to expect that if he were involved in a Kurdish based political party that he would be able to speak Kurdish. He had refused to have his spoken language be the subject of language analysis.
10. The respondent further regarded as inconsistent the appellant's initial claim to have fought with the PKK as opposed to his role in the HDP party taking collections, or alternatively not having a role at all within the party. The appellant had not referred to the HDP in his screening interview and didn't know which party he was a member of. He had a limited knowledge of the HDP. He said that he had never held a gun in his life, which was inconsistent with his claim to have been PKK fighter.
11. The respondent also regarded as inconsistent his claim that he had first been arrested on 28 February 2014 and a second occasion to 3 months before arriving in the UK in 2015. This was in part on the basis of the inconsistent chronology. The appellant claimed to have been tortured during the second period of detention and failed to provide any supporting evidence. He claimed to have been arrested and released on bail, subject to reporting restrictions and a requirement that he become an informer, which was not consistent with how objective evidence (a Country Policy and Information Note or 'CPIN') described how suspected political activists were treated.

12. The respondent rejected the appellant's claim by reference to the Refugee Convention. On the same facts, the respondent rejected the appellant's application under articles 2 and 3 of the European Convention on Human Rights ("ECHR").
13. The respondent considered the appellant's private and family life in the context of article 8 of the ECHR, by reference to paragraph 276ADE and appendix FM of the Immigration Rules. The appellant did not have a partner or any children in the United Kingdom; had been present for a relatively brief period in the United Kingdom; and there were not very significant obstacles to his integration into Turkey.

#### *The appellant's appeal*

14. The appellant appealed against the respondent's decision on 19 September 2018. In his brief grounds of appeal, he reiterated that he would be at risk of persecution because of the perception that he had been involved in anti-government activities.

#### *The Hearing*

15. The proceedings were interpreted throughout with the assistance of a Turkish interpreter, including when the appellant gave oral evidence. At the beginning of the hearing, the interpreter and the appellant confirmed that they understood one another.
16. Despite no apparent difficulty in engaging in the Tribunal process during the hearing, I was conscious of, and considered, the Joint Presidential Guidance Note No. 2 of 2010 in relation to vulnerable witnesses. I considered this in particular in relation to assertions around the appellant's ability to recall events and difficulties that he might have in relation to specific dates, which might be explained by his relative youth and depression, or a form of stress disorder, as referred to in the expert report of Dr Hajioff.

#### *Documents*

17. The respondent provided a bundle containing the appellant's immigration history; the screening and substantive asylum interview notes; the refusal decision and the appellant's appeal. The appellant provided a paginated and indexed bundle, which included his written witness statement. The appellant also gave oral evidence, on which he was cross-examined.

#### *Issues*

18. I identified and agreed with the parties the issues in the case. The appellant feared persecution from the Turkish authorities, because of actual political loyalties, namely support for the HDP. He feared persecution by state actors so that internal relocation and sufficiency of

protection were not available to him. The key issue was agreed as credibility, although Section 8 of the 2004 Act was not relied on by the respondent, given the appellant's relative youth when he travelled across Europe. I was asked to consider the appellant's rights under articles 2 and 3 of the ECHR based on the same facts. Ms Nnamani confirmed that article 8 was not relied on and in respect of the article 3 claim, this did not relate to mental health issues, in the sense that the appellant did not rely on a risk to his mental health on his return as breaching article 3; rather he relied on adverse attention from the Turkish authorities, for example a repetition of the torture and detention he claimed to have previously suffered.

### *Potential new evidence*

19. I gave oral directions, followed up in writing on 10 January 2020, in relation to written submissions and any application to admit new evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. I gave the following reasons:

*"The disputed issue of the appellant's claimed Kurdish ethnicity was identified at the earliest stage as one of the foundations of his protection claim. The First-tier Tribunal had noted that the appellant claimed that his brother had been granted protection as a refugee on the basis of being of Kurdish ethnic origin and for reasons associated with his own political opinions. The FtT had recorded at [49] of his decision that he was" informed that the brother does not wish to provide the appellant with any support or assistance and the fact that the brother has been granted asylum is not binding on the FTT, nor does it inevitably leads to the conclusion that the appellant is Kurdish".*

*One of the grounds of appeal to the Upper Tribunal was that the FtT had failed to have regard to the fact that the appellant's brother was recognised as a refugee, in circumstances where it was said that there had been no dispute about the parties' relationship.*

*In the re-making hearing, Ms Bassi made clear the respondent's position that she did not accept that the two men were brothers as claimed and the basis on which the alleged brother had been granted refugee status remained unclear from the limited documents.*

*In his oral evidence given in examination-in-chief, the appellant referred to his discussions with his brother about recent events. In that context, I asked the appellant to comment on paragraph [49] of the FtT's decision, referred to above. The appellant gave evidence that his brother had never refused to help; he accepted that they were on good terms; they had never discussed whether the appellant's brother would be willing to help him with his protection claim; his brother was not informed about the previous FtT hearing, and had not attended because the appellant had not been advised by his solicitor or Counsel to bring any other witnesses; and*

*the appellant had been advised that no one else could come into the hearing except for him, but if the Tribunal now required his brother's attendance, the appellant would be happy to bring him to a future hearing. I indicated to Ms Nnamani that as the appellant was making reference to legal advice while giving live evidence, I did not treat this as amounting to a general waiver of legal privilege. I indicated that any application under Rule 15(2A), which she indicated she would wish to make, needed to provide a full explanation for the circumstances around the appellant's brother's evidence, or its lack of production before the FtT, noting that the appellant is not required to waive legal privilege. I discussed and agreed with the representatives the above directions. Ms Nnamani specifically indicated that she was content that we proceed with the re-making hearing today, with the opportunity to provide further written submissions and the opportunity to make a rule 15(2A) application."*

### *The appellant's evidence*

#### *Written witness statement*

20. The gist of the appellant's written witness statement was that he became politically active for the HDP in 2014 and became a member, distributing leaflets and attending demonstrations and rallies as well as collecting for donations. His first detention was on 28 February 2014 when he was celebrating the festival of Newroz and others who were attending began fighting. He was attacked by four policemen, and he and colleagues were beaten, arrested and as he was getting into a car, a policeman slammed his door shut damaging his finger. He was then taken to security headquarters where he was placed in a cell for interrogation and detained for a month and beaten many times. His second period of detention was in June 2015 when he was attending a demonstration at which an explosive device was set off, injuring his knee. He was arrested, dragged to a police vehicle injuring his knee further and taken to security headquarters where he was detained for around two to three months and accused of being a PKK terrorist, had his nose punched, his teeth broken and he was only released if he agreed to become an informer. He reported to the police initially but then fled to a friend's house where he hid for many months, then hid in a second location in Istanbul before fleeing Turkey in November 2016. He arrived in the UK on 9 December 2016.
21. The appellant then dealt with a number of the points on which the respondent had taken issue as amounting to inconsistencies. He had been trying to state, when interviewed by the respondent that he was involved in the HDP, but that the authorities had accused him of being a PKK member. He had intended to say that he did not have an official role in the party but used to take part in activities such as collecting donations;

that he was a member of the HDP and any answer to the contrary had been misunderstood. He had referred to the HDP in his screening interview and he had been accused of fighting with the PKK but was not involved with them. He had been very nervous during his interview and had found it difficult. One could take part at any age in activities of the HDP but only become a member aged 18. He explained any difficulties over the chronology of events on the basis that he did not leave Turkey until November 2016. In terms of his ability to speak Kurdish he said that he spoke Kurdish, but he was not fluent and therefore he did not wish to give his interview in Kurdish and had given information about Kurdish culture.

### *The appellant's oral evidence*

22. The appellant had not attended the previous hearing as he had learnt that his father had been killed while fighting as a guerrilla. On learning of his death, the appellant had turned his phone off as he was not feeling safe. He learnt this from his brother who was in England, via WhatsApp and the internet, although he then clarified that he himself did not have WhatsApp and internet messages on his phone, but that his brother had showed him the messages. He had not thought to produce the evidence to the Upper Tribunal for this hearing. He believed his brother had been born in 1994 but did not know exactly when, and he had said that the brother been born possibly in 1995 or 1996, in answer to question [4] of the asylum interview record ("AIR") because he was afraid or had panicked. He did not know when his brother had come to the UK. His brother had not given evidence because the facts of his case were obvious, and no-one had informed him of a need to produce his brother's evidence and he had been told that only he could attend the hearing to give evidence. His brother had been granted asylum for the same reason and they had been together in Turkey.

### *The respondent's closing submissions*

23. It would be reasonable to expect the appellant to know his brother's date of birth, even if he didn't know when he had entered the UK. Even if it were accepted that the appellant and the 'brother' were related as claimed, the issue of asserted Kurdish ethnicity had been disputed from the beginning. Even if the appellant were of Kurdish ethnicity, it was never suggested that purely because his Kurdish ethnicity, that the appellant had been put at risk so that there still needed to be an individual consideration of the facts of the appellant's case. In terms of his ethnicity, the appellant's evidence had been inconsistent. In answer to question [34] of the AIR, the appellant had said that he normally spoke Kurdish; he then said that he forgot some letters; he then went on to say that he could manage some words in Kurdish ([36] AIR) and then only a few words. In the space of only two questions he had gone from being able to normally speak Kurdish to speaking only a few words. He had also failed to explain why he was unwilling to undertake a language analysis test. These were all explicable because the appellant was not of Kurdish ethnic origin. The

appellant was also inconsistent about when he claimed to speak Kurdish. Paragraph [47] of the FtT determination records the appellant as saying that he spoke in Kurdish and a mixture of Kurdish and Turkish, whereas the FtT also noted that he spoke with an uncle in the UK in Kurdish but then said that this was not a regular occurrence. I needed to consider the evidence in the round which damaged his claim to be Kurdish.

24. There were further inconsistencies in the appellant's evidence around political activities. Apart from a single reference to the HDP during his screening interview he had made repeated references to being a PKK fighter (page [18] of the appellant's bundle) and confirmed that he understood the questions put to him. At question [26] of the AIR he then changed his account, without any credible explanation. At question [8] AIR he said that he had a job in the HDP and then at question [27] AIR, said he did not work for the HDP. At question [11] AIR, he said he was not a member of the HDP but at question [29] said he was. At paragraph [58] of the decision, the FtT records him as saying that he was an HDP volunteer. He changed his account from being a fighter to distributing leaflets and he could not answer simple questions such as who the leader of the HDP was (question [41] AIR) or when the HDP was formed (question [37] AIR). In terms of whether the vagueness of his answers might be explained because of the appellant's relative youth and any vulnerability, the appellant had said at question [11] AIR that he had attended the HDP offices every day and so it was reasonable to assume his familiarity with the HDP.
25. The expert report of Dr Hajioff did not assist the appellant. Whilst his expertise in scarring assessments was accepted at paragraphs [50] and [51], Dr Hajioff indicated that the appellant might be deliberately exaggerating his mental health issues to make his case stronger.
26. There were further inconsistencies in relation to the reason and dates of the arrests. At question [22] AIR he said he was first arrested at Newroz celebration on 1 October and on a second occasion on 28 October, without specifying the years, whereas he now asserts that his first arrest was on 28 February 2014. He subsequently asserted that his second arrest was on 10 June 2015. The periods of detention were also inconsistent. He had suggested at question 15 [AIR] that he had been detained on the first occasion for a month, but at paragraph [9] of his witness statement, for more than one month. In relation to the second period of detention, he suggested at question [13] AIR that he had been detained for three months, whereas in his witness statement this was two to three months. He was inconsistent about when he had left Turkey, claiming in the screening interview to have left on 13 December 2016 (question [1.18]) but at question [16] AIR, he said that he had been arrested on the second occasion in 2015; been detained for two months and then left Turkey soon after his release. Whilst at paragraph [11] of his witness statement he had referred to going into hiding in a friend's house for many months, there was no mention of hiding for many months prior to his witness statement.



27. In relation to Dr Hajioff's report at paragraph [20], Dr Hajioff had noted that there were other possible causes of the scarring. Moreover, in relation to his inconsistencies and exaggerations, the medical syndrome known as 'Ganser' syndrome which was a form of disassociation might be one explanation and there was a reference to him possibly suffering from chronic PTSD, but we had no GP records and the appellant had given oral evidence that he was receiving medication from a GP but had not disclosed any medical details to that effect. Similarly, if his father had died, the appellant had provided no explanation for why he had not sought to apply for this evidence to be adduced. The reasons for the brother not attending the previous FtT hearing were different from those now explained. The risk factors in the country guidance case of IA (risk – guidelines – separatist) Turkey CG [2013] UKIAT 0034 at paragraph [46] were not relevant to the appellant as he was not Kurdish.

*The appellant's closing submissions*

28. Ms Nnamani referred to the appellant's skeleton and written argument prepared for the resumed hearing on 18 November 2019 which I considered but do not repeat in detail. The appellant's credibility was key to the assessment of risk to the appellant. We had a detailed witness statement for the appellant and a medical report of Dr Hajioff. He was either a minor or had only recently just turned 18 during the screening interview and his relative youth, as well as the trauma and mental health that he suffered from could explain any difficulties with dates and inconsistencies. He claimed to be vulnerable and suffering from trauma, but this did not affect the core substance of his claim, that he had been detained twice and held for a period of many months.
29. I had to consider, by reference to the objective evidence, whether it was likely for the appellant to have been detained for leafleting. If he had been aligned to the HDP and attended demonstrations or had distributed leaflets then, to the lower evidential standard, this was perfectly plausible. I should exercise caution in considering inconsistencies during the screening interview, noting the appellant's anxiety and age. The references to the PKK in the screening interview were explained by the appellant in his witness statement, where he explained that he had been perceived as a PKK member but had only been involved with the HDP. Whilst Dr Hajioff referred to possible exaggeration, nevertheless the question was whether the core of the account was credible to the lower evidential standard. The scarring assessment (page [12] of the appellant's bundle, paragraph [37]) described some of the scarring as 'typical' of the ill-treatment alleged, by reference to the well-known Istanbul Protocol. There had been an assessment of the appellant's mental health, and at paragraph [49] a reference to the appellant's memory as being poor as well as mental health problems at paragraph [48]. There was objective evidence that torture was used in the context of detention and Ms Nnamani indicated that she would make an application dealing with the evidence of the brother.

30. Noting the country guidance of IK (returnees – records – IFA) Turkey CG, if the appellant were of Kurdish ethnicity, had leafleted on behalf of the HDP and had previously been detained and ill-treated as claimed, then by reference to paragraph 339K of the Immigration Rules, it was likely that he would be questioned on return as an unsuccessful asylum seeker; could not be expected to hide his HDP loyalties; and would therefore be at risk of adverse treatment. The claim therefore stood or fell with an analysis of his ethnicity, claimed HDP activities and previous alleged ill-treatment, by reference to the objective evidence, noting that the evidential standard was the lower standard and that inconsistencies or exaggerations in one area did not mean that the core of the account could not be credible.

*The appellant's application to adduce further evidence*

31. On 21 January 2020, the appellant's solicitors sought to adduce the witness statement of the appellant's claimed brother, 'TD' and a photocopy of his biometric residence permit. The letter asserted:

*"The above evidence confirms that [TD] is the brother of [SD] and that they are Kurdish ethnicity and that TD was granted refugee status. The above evidence was not previously submitted because we were instructed that the appellant and his brother were not on good terms the appellant has confirmed following the hearing they are not on good terms and apologises for the confusion. He hoped that his brother would help. We contacted the appellant's brother who informed us that he was only willing to provide a short witness statement and would not provide any further documents or to help the appellant due to their strained relationship. He does not wish to have any further contact regarding the appellant. Therefore he is not willing to attend a court hearing."*

32. The witness statement of TD includes an assertion that he is related to the appellant, as claimed, and was granted refugee status in December 2018 because of his political 'problems' in Turkey. They were both of Kurdish ethnicity and TD had been accused of being a PKK terrorist even though he supported the HDP. The appellant had suffered similar problems. TD stated that his relationship with the appellant was not good and that he did not come to 'court' as they didn't talk to each other. He referred to the appellant risking detention and torture. He made no reference to the death of the appellant's father, to which the appellant had referred in oral evidence, which the appellant claimed to have discussed with TD.
33. In response, the respondent objected to the application, arguing that the appellant did not make sufficiently clear why the witness statement had not been submitted earlier. The appellant had clearly been inconsistent with regard to his relationship with TD; claiming first, before the FtT, that they were not on good terms; then claiming in oral evidence before the Upper Tribunal that they were on good terms; and now asserting that they were not. The application did not sufficiently explain why the appellant gave evidence at the Upper Tribunal hearing that TD had never refused

help and they were on good terms. Even if the Upper Tribunal were minded to admit the statement, the respondent submitted that it was not independent evidence that he was related to the appellant as claimed and did not provide any evidence which outlined the basis of the grant of asylum.

34. Noting the principles in Ladd v Marshall [1954] EWCA Civ 1, while the appellant's account of having a poor relationship with TD remains to be assessed, his solicitors assert that they were instructed that the appellant and his brother were not on good terms. I am prepared to accept the word of those representatives, a firm of solicitors, as to what their instructions were, even if those instructions turn out to be untruthful or inaccurate. As a consequence, I am just about prepared to accept that the evidence could not have been obtained with reasonable diligence for use at the FtT hearing, although for the avoidance of doubt the question of whether the appellant has been honest with his own solicitors and the FtT is a separate matter. I regard the evidence as having a potentially important influence on the result of the case, although the avoidance of doubt, the weight I attach to that evidence is a separate matter. On the third principle, I accept that on the face of it, the evidence is potentially credible, although once again, it needs to be considered in the round with the remaining evidence.

### *The Law*

#### *Asylum protection*

35. Paragraph 334 of the Immigration Rules states that the appellant will be granted asylum if the provisions of that paragraph apply. The burden of proof rests on the appellant to satisfy me that he falls within the definition of a refugee in Regulation 2 of the Qualification Regulations, as read with Article 1(A) of the Refugee Convention. In essence, the appellant has to show that there are substantial grounds for believing that he is outside his country of nationality by reason of a well-founded fear of persecution for a Refugee Convention reason and is unable or unwilling, owing to such fear, to avail himself of the protection of that country.

#### *ECHR*

36. The burden of proof rests with the appellant to satisfy me that there are substantial grounds for believing that, as a result of the respondent's decision, that he will be exposed to a real risk of death contrary to article 2 or serious harm in breach of article 3 the ECHR.

#### *Findings of fact*

37. I have considered all the evidence presented to me, whether I refer to it specifically in these findings or not. This case centres around the

appellant's credibility. In making my findings, I have considered the provisions of paragraph 339 of the Immigration Rules, and in particular paragraphs 339K and L. I accept Ms Nnamani's submission that if the appellant is of Kurdish ethnic origin; has suffered previous adverse treatment as extreme as alleged, with lengthy periods of detention lasting months; was released but only on condition that he acted as an informer; is returning on a one-way travel document; and could not be expected to lie about his loyalties to the HDP; then even if his prior involvement was low-level, he would be at risk of further adverse attention amounting to persecution (see IK (returnees - records - IFA) Turkey).

38. In assessing the appellant's credibility, I was conscious that I needed to consider whether it was consistent with objective country evidence (one of the FtT's errors of law) and I was also conscious that inconsistencies in the appellant's chronology might be explained by his relative youth and his suffering from PTSD, which might also explain omissions in parts of the chronology, for example going into hiding immediately prior to leaving Turkey. I also needed to consider the medical evidence of Dr Hajioff in the round, and not discount because I had already formed a view about the appellant's credibility.
39. I accept that elements of what were described as the appellant's 'core' account of arrest detention on two occasions, by virtue of attending Newroz celebrations and commemoration of the "Roboski massacre" were potentially consistent with wider country evidence. In particular, I considered paragraph [2.4.14] of the Country Policy and Information Note ('CPIN') - Turkey: Kurdish political parties - August 2018:

*"In general, the risk faced by a member or supporter of the HDP 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; an ordinary member would not generally attract the adverse attention of the authorities on account of their political beliefs. It will be up to a person to demonstrate that their appearance and participation at a demonstration or rally will have brought them to the adverse attention of the authorities such that they would experience serious harm or persecution on return"*

40. Taking his claim at its highest, the appellant has not claimed to be more than a low-level supporter of the HDP, but if he did attend demonstrations and was arrested as a result, the objective evidence is consistent with his account of adverse treatment. The fact of arrests at such mass events is also consistent with the CPIN (see paragraphs [2.4.6; 2.4.9; and 9.1.8]). It is unclear why post-arrest reporting is said to be inconsistent with objective country-wide evidence and I do not place any particular weight on that element of the respondent's case.
41. I also considered Dr Hajioff's report in the round. His expertise in assessing scars and psychiatry is unchallenged. He assessed the

appellant's scars by reference to the Istanbul protocol and noted that they were 'typical' or 'consistent' with defensive injuries or abrasive damage. At [41], Dr Hajioff noted that there are possible alternative causes of the scarring, such as previous accidental trauma. In particular, he had referred to the injury to the appellant's little finger on his left hand, which was well repaired and treated by an expert surgeon. This contrasted with the lack of any details provided by the appellant as to the surgery, and the FtT had recorded that the appellant only claimed in oral evidence, for the first time, that his finger was only partially amputated, and that a police officer pulled the terminal phalanx completely off. The FtT had noted, as do I, the lack of an explanation by the appellant for how he obtained expert surgery, as a person persecuted by the state; and why he did not mention something as traumatic as a police officer pulling of part of his finger with Dr Hajioff.

42. Dr Hajioff assessed the appellant as fulfilling the criteria for a diagnosis of PTSD and noted his great difficulty in giving a clear history, with an apparently poor memory. Dr Hajioff noted that the appellant's claimed inability to carry out simple mental calculations which were typical of the condition called 'Ganser' syndrome, in which people might give incorrect answers in order to simulate mental illness. Dr Hajioff noted at [50] to [56]:

*"[50] It is not clear whether that is deliberate malingering or a dissociative state. However, it does not match the general level of functioning.*

*[51] it may be that most of his account is genuine but that he is deliberately exaggerating his impairment in order to make this case stronger.*

*[56.] It is possible that he is exaggerating his disability to strengthen his case."*

43. I regarded Dr Hajioff's report as balanced and willing to accept alternative causes for the appellant's scarring and the possibility of the appellant feigning PTSD, but also the consistency of the scarring and the possibility of the appellant exaggerating symptoms because of disassociation. I attached significant weight to Dr Hajioff's report, as at least being potentially consistent with the appellant's claim.
44. Dr Hajioff's report also lends some support to the view that the appellant may have difficulties in remembering a clear chronology of events (see [25] of the report), which, to the lower evidential standard, just about explains the significant inconsistencies in the appellant's account of the dates when he attended the two public events at which he claims to have been detained; and in his chronology of fleeing Turkey and travelling to the UK. He had not previously referred, prior to his witness statement, to an extended period spent hiding in Turkey, but once again, I regard the omission as just about explicable, in the context of possible PTSD. In summary, the inconsistencies and missing events in the chronology are not positive factors in my assessment of the appellant's credibility, but

there is a potential explanation for them such that they do not damage his credibility.

45. I was conscious that the claims of two periods of detention and ill-treatment were elements of the 'core' of the claim, as described by Ms Nnamani, but both also need to be considered in the context of the other aspect of that core claim, namely the appellant's claim to be of Kurdish ethnic origin and having participated, even at a lower level, in HDP activities. It is in this respect that I regard the appellant's evidence as being so internally inconsistent, in a way that is not explained by a difficulty with memory, vulnerability, or cognitive function, that it significantly damages his credibility.
46. The appellant's account of his relationship with TD is inconsistent. I am just about prepared to accept that appellant's lack of knowledge of TD's date of birth, or when he entered the UK, does not damage the appellant's credibility, as these relate to dates. What I regard as significantly damaging the appellant's credibility is that:
  - a. Initially, his case, as presented to the FtT, was that TD was unwilling to provide the appellant with any assistance or support;
  - b. when I asked him, by open questions in the Upper Tribunal, to comment on that, he freely and easily explained, without difficulty or hesitation, that they had a good relationship, and indeed went on to describe his recent conversations with TD; and TD showing him WhatsApp and other social media evidence concerning the death of their claimed common father, which was why he had not attended a recent hearing;
  - c. the appellant's representatives now assert that: "*We were instructed that the appellant and his brother were not on good terms. The appellant has confirmed following the hearing that they are not on good terms and apologises for the confusion. He hoped that his brother would help.*"
47. Whilst it may have been possible that the appellant's solicitors made representations at the FtT about TD's unwillingness to assist the appellant, based on inaccurate instructions, this does not explain the appellant's clear oral evidence before me, that he and his brother were on good terms and his brother would be willing to help, when they were in fact not on good terms and his brother was only willing to provide limited assistance. The appellant's solicitors refer to "*confusion.*" I regard this as instead a significant inconsistency and I accept the respondent's submission that there is no explanation for this inconsistency, other than the obvious one, which is that the appellant is, regrettably, being untruthful about the nature of his relationship with TD, in order to avoid TD having to provide further evidence about the nature of their relationship; the appellant's ethnic origin; and the appellant's involvement in the HDP.

48. The appellant's inconsistency about the relationship with TD is only one aspect of the flaws in his claim to be of Kurdish ethnic origin and to have been an active member in HDP, but it is nevertheless an important one. Noting paragraph 339L(ii), in assessing whether to apply the statutory "benefit of the doubt" to the appellant, I conclude that the appellant has not submitted all material factors at his disposal, or provided a satisfactory explanation for the lack of relevant material. The biometric residence permit of TD does not establish, even to the lower standard, the nature of the claimed relationship between the two, or the basis on which TD was granted asylum, including claimed Kurdish ethnic origin. As Ms Bassi submitted to me, it could have been open to TD to consent to the production of the respondent's records of the assessment of his asylum claim; and the purported refusal by TD to do this on the basis of a breakdown in a relationship is not one which I accept. It is directly contrary to the appellant's oral evidence about their good relationship.
49. Moreover, when the appellant was asked in oral evidence why he had not sought to adduce evidence of the claimed death of their father, while fighting as a guerrilla, which would have been of central relevance to the appellant's claimed fear of persecution, in respect of which he said there was social media evidence, he did not suggest that his brother would be unwilling to provide this to him, as indeed TD had already showed him the material; rather he had not realised the need or importance to produce such evidence. That is not an explanation which I accept as reasonable and is inconsistent with the changed position that the siblings were and are estranged. There is also the absence of evidence from TD, which could otherwise have been disclosed, relating to the appellant's activities with the HDP, which are only briefly touched on in TD's statement.
50. The appellant's claim to be of Kurdish ethnic origin is weakened in three further aspects.
51. First and most importantly, his evidence on his ability to speak Kurdish is materially inconsistent. I accept the respondent's submission that during the course of the substantive asylum interview, at AIR [34], he said that he 'normally' spoke Kurdish; and when asked about his willingness to undergo language analysis at [36] said that he spoke only a few words. This was also inconsistent with his evidence before the FtT that he usually spoke Kurdish with his uncle but alternatively this was not a regular occurrence ([47]). In summary, I accept as possible, the proposition that those of Kurdish ethnic origin may, through suppression of their culture, have limited spoken Kurdish. What undermines the appellant's credibility in this aspect is his inconsistency about his spoken Kurdish.
52. Second, is his refusal to agree to analysis of his spoken language, with the inadequate explanation that he only spoke a few works of it, having previously said that he normally spoke it. In essence, he was refusing to agree to the production of evidence which would have resolved that inconsistency and would otherwise have been available.

53. Third, his subsequent claim to speak only limited Kurdish is undermined by, and undermines his claim, to have been at the HDP '*place*' '*every day*', during his period of involvement, which was during at least 2014 and 2015 (in answer to question [11] AIR). The available evidence is that the HDP is a predominantly Kurdish political party (see [4.4.3 of the CPIN). Even where his activity may have been low-level, the claim of daily contact with the HDP undermines an already inconsistent assertion of proficiency (or lack of proficiency) in Kurdish. I considered that the appellant's basic knowledge of Kurdish culture during the substantive asylum interview is reflective of just that - someone with a basic knowledge of Kurdish culture, but who is inexplicably inconsistent about his proficiency in Kurdish, and which undermines his claimed regular involvement in the HDP, even if he has basic knowledge of that party.
54. On the connected issue of the appellant's activism within the HDP, this is weakened by the lack of detail which TD, had he given further evidence, might otherwise have provided in relation to the appellant's previous activities, if the appellant's account is to be believed; and as already noted, the lack of detail from the appellant or TD about the death of the appellant's father, in connection with Kurdish nationalist activities, about which no additional evidence has sought to be adduced, but which would have been central to the appellant's claimed fear of persecution by the time of the remaking hearing.

### *Conclusions*

55. I conclude that the appellant has not established his general credibility for the purposes of Paragraph 339L(v) of the Immigration Rules. The inconsistencies in his account go beyond difficulties in chronology and missing events; or an absence of knowledge such as the date of birth and departure of his claimed brother, which was otherwise inexplicable by his youth and PTSD. I have reflected whether, considering Dr Hajioff's scarring and psychiatric assessment, those inconsistencies, when taken in the round, nevertheless mean that the core of the appellant's account can be accepted, to the lower evidential standard. I am conscious that some elements of the person's claim may be fabricated or exaggerated whilst other elements of it remain accurate.
56. I conclude that the appellant's claim to be of Kurdish ethnic origin and his HDP activism go to the core of his claim, noting the scarring and possible PTSD. He has failed, without reasonable explanation, to adduce all the relevant evidence which would otherwise have been readily available to him and his evidence in relation to the claimed relationship with TD is materially inconsistent, for the reasons already outlined.
57. The appellant has not demonstrated, to the lower evidential standard, that he is of Kurdish ethnic origin or that he was actively involved, whether as a member or any other informal capacity, with the HDP. I do this, having



evaluated the claim of a relationship with TD, which I regard as unreliable, both in respect of the nature of their sibling relationship; the appellant's claimed ethnicity; and the basis on which TD was granted asylum.

58. Dr Hajioff has, in his expert report, accepted that there may be other causes of the appellant's scarring; and that the PTSD symptoms, whilst diagnosed, may be exaggerated or feigned reasons other than disassociation. Whilst I accept that participation in mass events may pose a risk to a low-level HDP members; and that an account of arrest and ill-treatment is consistent with that narrative, I do not accept that the appellant is of Kurdish ethnic origin or was actively involved in the HDP; or that he attended the two events as claimed, which was the other aspect where the FtT had not made clear findings.
59. I also conclude that the appellant has not shown, to the lower evidential standard, that he was the subject of adverse treatment at the hands of the Turkish authorities. It follows that he has not been the subject of persecution, serious harm, or threats of the same, for the purposes of Paragraph 339K of the Immigration Rules. He would be returning to Turkey on a one-way travel documents, without any political affiliations to the HDP, or as someone of Kurdish ethnic origin. In circumstances, he would not fall within any of the risk categories identified in IK (Returnees - Records - IFA) Turkey.
60. Based on the same findings, namely the lack of a risk of adverse treatment from the Turkish authorities, I also find that his removal would not breach his rights under articles 2 or 3 of the ECHR, which were focused solely on such claimed adverse treatment.

### **Decision**

61. The appellant's appeal on asylum grounds dismissed.
62. The appellant's appeal on human rights grounds is dismissed.

Signed: J Keith

**Upper Tribunal Judge Keith**

Dated: **13 February 2020**

### **To the respondent Fee award**

The appeal has failed and so there can be no fee award.

Signed: J Keith  
**Upper Tribunal Judge Keith**  
Dated: **13 February 2020**

**ANNEX: ERROR OF LAW DECISION**



**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 July 2019**

**Decision & Reasons  
Promulgated**

.....

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**‘SD’  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Panagionopoulou, Counsel, instructed by Howe & Co Solicitors  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. These are the approved record of the decision and reasons which were given ex tempore at the end of the hearing on 22 July 2019.

**Introduction**

2. This is an appeal brought by the appellant against the decision (the 'Decision') of First-tier Tribunal Judge Macdonald, (the 'FtT') promulgated on 12 December 2018, by which he dismissed the appellant's appeal against the respondent's refusal on 12 September 2018 of his protection claim.
3. In essence, the appellant's claims involved the following issues: his adverse treatment by the Turkish authorities as somebody of Kurdish ethnicity and either a PKK fighter or somebody involved in the HDP as a result of which he had been arrested twice, detained and tortured before fleeing Turkey. The core points taken against the appellant by the respondent related to his lack of knowledge of fighting for the PKK during his asylum interview and his inconsistency over his role in the HDP, whether handing out of leaflets or not; his vagueness about the aims of the HDP; and at the age of which he claimed to have joined the HDP, in contrast to objective evidence as to when the HDP permitted new members to join. It was also said by the respondent that he was inconsistent about the chronology of when he claimed to have been detained; how long his journey across Europe took and his entry to the United Kingdom ('UK'). The respondent also did not accept the appellant's claimed ethnicity, noting that the appellant did not speak Kurdish; refused language analysis; and lacked knowledge of Kurdish culture.

### **The FtT's decision**

4. The FtT made a detailed analysis of the evidence running from paragraphs [37] to [74] of the Decision. the FtT was not impressed by the appellant's refusal to undergo language analysis and concluded that the appellant was not Kurdish as claimed. The FtT also noted the inconsistencies about what the appellant regarded as his role in the HDP and the accounts of two arrests; including the inconsistency in the extent of injury on the first encounter and the lack of broken teeth as claimed, in contrast to a medical examination.

### **The Grounds of Appeal and the Grant of Permission**

5. The appellant lodged grounds of appeal which are essentially that the FtT erred in finding that the appellant was not of Kurdish ethnic origin, given that his brother was recognised as Kurdish and had succeeded in his asylum claim before another First-tier Tribunal; and had ignored objective evidence on the difficulties of being able to speak Kurdish freely and the consequences of assimilation. The FtT had failed to make clear findings on the appellant's activities and had failed to consider objective evidence on the risk of adverse attention. If the appellant had attended rallies, the FtT had failed to make clear findings on the appellant's first claimed detention at a Newroz celebration. The FtT also failed to give adequate reasons for finding that the second period of detention did not take place; and had failed to engage with the risks as factors set out in the case of **IK (Returnees - Records - IFA) Turkey CG [2004] UKIAT 00312**, particularly when the respondent appeared to accept that the appellant

might have been detained. First-tier Tribunal Judge SPJ Buchanan initially refused permission to appeal but it was granted by Deputy Upper Tribunal Judge Chamberlain on 20 June 2019. She regarded many of the other grounds to be less arguable but she concluded that it was arguable that the FtT had not made clear findings on the appellant's activities in the HDP; whether the appellant had indeed been detained on the first occasion; and a full analysis of the risk to the appellant on return. The grant of permission was not, however, limited in its scope.

## **The hearing**

### *The appellant's submissions*

6. Ms Panagionopoulou emphasised the difficulties in the FtT's finding on the appellant's ethnicity, when the FtT had been aware that the appellant's brother with whom that it was said he was estranged, had nevertheless been found to be a refugee. When I sought clarification she confirmed that this had been the result of an earlier First-tier Tribunal determination and whilst there had been no adjournment request of the appellant's hearing, the FtT had been aware of that earlier determination but had concluded that it was unnecessary to adjourn the case and had therefore not had the benefit of the earlier determination in relation to the appellant's brother. In essence this was a case therefore where the FtT had not had the benefit of all the relevant information. It also may risk the FtT applying too high a standard of burden when the FtT had referred to not being bound by a finding as to refugee status when the fact that the appellant's brother did have refugee status was not something open to the FtT to impugn, albeit it did not necessarily follow that the appellant would himself be a refugee. Nevertheless, this went directly to the question of the appellant's claimed Kurdish ethnic origin.
7. The FtT had further erred in focussing on the appellant's status as a volunteer or member within the HDP, as opposed to the activities that the appellant had actually carried out. In that regard, I was referred to paragraph [58] of the Decision which referred to the appellant being described as a volunteer. However, referring to paragraph [57], where the appellant described his activities on behalf of the HDP at a low-level, and distributing the leaflets at demonstrations, the focus on status ignored risk factors both in terms of participation at demonstrations which could, in a wider context place him at risk; and the extent of that activity. In particular, the FtT had ignored the objective evidence at paragraph [2.4.14] of the August 2018 Country Information Report dealing with Kurdish political opposition. The FtT had erroneously assumed that merely lower party members or volunteers would not be at risk, whereas in fact the report stated that when 'ordinary' members of the HDP had come to the adverse attention of authorities this had generally been whilst participating in demonstrations and rallies. An ordinary member would not otherwise attract the adverse attention of the authorities on account of their political beliefs. However, the FtT ignored the fact that on the appellant's account, he had claimed to have been the subject of the

adverse attention of the authorities, which was the very point that the Country Information Report was addressing. There was inadequate reason for finding, in that context, that the appellant was not at risk, by virtue of his low-level status.

8. There were also conflicting findings about the two detentions; on the one hand, it was said at paragraph [66] of the Decision that the appellant may have been detained whilst celebrating Newroz; whereas at paragraph [73] there was a finding by the FtT that he had not been persuaded that the appellant had been shown, in relation either to detention or a fear of persecution, that his appeal should succeed. The reason for the conclusion that his protection claim did not succeed was insufficiently explained.
9. There was a further discrepancy in relation to the second period of detention, at paragraph [70] of the Decision. The FtT was not persuaded that the appellant was assaulted, as claimed, whilst detained on the second occasion. This left open the possible conclusion that the FtT may have found that the appellant was in fact detained but that in fact he had not been assaulted as claimed. This contrasted to paragraph [72] where the FtT had found that the detention did not take place.
10. In any event, while at paragraph [77], while the FtT referred to having carefully considered the authority of **IK** and the conclusion that the appellant did not face a real risk on return, noting that he was at best a low-level supporter of the HDP who had been detained, this ignored the fact that his brother had been granted refugee status; the appellant would be returned as an undocumented returnee and seen as a failed asylum seeker. In essence, the assessment of the **IK** risk factors was inadequate.

#### *The respondent's submissions*

11. Mr Tarlow, in brief submissions, invited me to consider, as Judge Buchanan had done when refusing permission in the first instance, that the appeal was merely a disagreement with the FtT's findings.

#### **Decision on the Error of Law**

12. I conclude that there were material errors of law in the Decision, in three specific aspects. The first was in relation to the question of how the FtT approached the appellant's claimed Kurdish ethnic origin. Paragraph [49] of the Decision records that the appellant's brother was granted asylum on 21 June 2018, albeit that they were now estranged so that the brother had not assisted the appellant in his appeal. The FtT noted that the fact that the brother had been granted asylum was not binding on him nor does it inevitably lead to the conclusion that the appellant is Kurdish. The reference to an 'inevitable conclusion' ignores the lower standard of proof, which the FtT should have adopted when considering all aspects of the appeal, including the appellant's ethnicity. The question of whether the appellant is Kurdish or not must also inform any assessment of the

remainder of his claim. In not considering more fully the earlier First-tier Tribunal determination relating to the appellant's brother, whilst of course the authority of **Devaseelan v SSHD [2002] UKIAT 00702** does not strictly apply to such a case, the FtT failed to consider potentially relevant evidence and to assess whether that might have a bearing on the appellant's claimed Kurdish ethnic origin, which in the context of objective country evidence on the effects of assimilation, might have addressed the FtT's concerns about the appellant's refusal to undertake a language analysis test. The analysis of the claimed ethnic origin is central to the appellant's protection appeal. The FtT's finding that he is not Kurdish also sits uneasily with apparent findings that the appellant participated in Newroz celebrations.

13. Second, I accept the appellant's submission that the Decision is unclear on whether the appellant attended either the first or second event, at both of which he claims to have suffered adverse attention. By way of example, on the one hand, there is a reference to paragraph [70] to the FtT not accepting that he was assaulted while detained, on the second occasion, which leaves the implication that he had been detained, whilst at paragraph [72], the FtT did not accept the fact of detention on the second occasion. At paragraph [77] there is the suggestion that the appellant may have attended the Newroz celebrations and then been detained. In relation to both events, I concluded that the Decision required clarity on the findings both in respect of the first and the second attendances and detentions; and that this was material, noting the Country Information Report of August 2018 where it is said that ordinary members of the HDP have come to the adverse attention of authorities and this had generally been whilst participating in demonstrations and rallies. This in turn meant that if the FtT were persuaded that the appellant had attended the events, by reference to objective evidence, he may, even as a low-level supporter, have faced adverse attention.
14. Third, I conclude that the Decision did not adequately consider the risk to the appellant on his return, considering the risk factors identified in **IK**. In the context of the appellant returning and possibly being perceived as a failed asylum seeker and the subject of further questioning (as to which I make no finding), the lack of clarity on whether the appellant was previously detained is material. This is all the more so in the context of the appellant's brother being granted asylum; and the error identified in relation to the finding on Kurdish ethnicity.

### **Disposal**

15. All of the potentially relevant evidence is documented (such as the previous First-tier Tribunal determination, as well as the objective evidence, including that of a country expert). The issues are discrete and limited and there is unlikely to be a need for further evidence. In the circumstances, I regarded it as appropriate for the Upper Tribunal to remake the Decision, rather than remit the appeal back to the First-tier

Tribunal. In remaking the Decision, none of the FtT's findings are preserved.

**Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside. The Upper Tribunal shall remake the decision.**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.**

Signed J. Keith

Date: 30 July 2019

Upper Tribunal Judge Keith

**TO THE RESPONDENT**  
**FEE AWARD**

While I have allowed the appeal, I considered that any decision on a fee award should await the outcome of the remaking of the decision, so that a decision on the fee award is reserved.

Signed J. Keith

Date: 30 July 2019

Upper Tribunal Judge Keith