



**IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM  
CHAMBER**

**Case No: UI-2022-006658  
First-tier Tribunal No:  
PA/50274/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On the 17 June 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

**EO  
(anonymity order made)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E Daykin

For the Respondent: Ms H Gilmore

**Heard at Field House on 24 April 2024**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity, given that this is an asylum appeal.**

**DECISION AND REASONS**

1. This is the appeal of EO, a Turkish citizen, against the decision of the First-tier Tribunal of 16 May 2022 dismissing his appeal on asylum grounds, itself brought against the Respondent's refusal of his asylum claim on 11 January 2021.

2. EO is from Corlu in Northwestern Turkey. The account he advanced supporting his claim sets out that he had been a supporter of the HDP since 2014, and previously had supported the BDP until it was banned. He was a member of his local HDP neighbourhood committee and participated in canvassing at elections, attending protests, demonstrations and meetings, and putting up posters, and he attended cultural events and encouraged people to support the pro-Kurdish parties. He was raised in a politically active pro-Kurdish family: one brother was martyred in 2000, another was charged and imprisoned with PKK involvement in 1994 and spent 6 months in prison, and three cousins served significant prison sentences for PKK involvement.
3. He was detained by the police in March 2014, ironically having himself sought to lodge a report with them of having chased by fascists for putting up political posters, and accused of supporting the PKK. He was arrested, beaten and verbally abused by the police in November 2016 having attended a HDP protest, and detained for three days following a press conference. He became an official HDP member in 2018.
4. In December 2018 he visited his sister in France for a week, travelling on his own passport, returning to Turkey thereafter. He fled Turkey in September 2019 following a raid on his local HDP office. Thereafter he learned of an official message left with his wife in August 2019 whilst he was out of the house that he attend a police station to provide a statement; fearing detention and mistreatment he fled the country. After his departure the police visited his home again in September 2019 and September 2020.
5. The First-tier Tribunal disbelieved the Appellant's account, albeit that it accepted that he had been a BDP and HDP supporter, because aspects of it were thought implausible or discrepant:
  - (a) His claim to have been issued a HDP membership card on the basis of his activism being perceived as particularly valuable, given such cards were not routinely issued to all members, as this would be arbitrary; furthermore, he had not adequately explained how it was that he was issued with a congress delegation card.
  - (b) Why he took the risk of having a record available to the Justice Ministry from September 2018.
  - (c) He had not declared the arrests at the hands of the security forces on his visa application form, and had said that that form was completed by an agent of his employer: yet elsewhere stated he had been self-employed.
  - (d) There was no reason for the police to have arrested him in March 2014 given, had he been followed by plain clothes officers, they should have been aware that there was no evidence demonstrating any real involvement with the PKK; and on that occasion he was released without charge, suggesting that a lawful process was followed. Further, he only mentioned being taken to a hospital for a formal check-up in oral evidence, not in his witness statement.
  - (e) There was no reason for him to have been interrogated about his family history in November 2016 given the authorities would already have been aware of this from his arrest in 2014.
  - (f) Being a HDP member would not suffice to attract adverse attention from the security forces.

- (g) It was surprising he had been able to travel to France to visit his sister and return to Turkey without facing difficulties from the authorities.
- (h) There was no reason for the Appellant to think that he would face a real risk of detention in 2019 given that there had been no interest in him in the preceding 2½ years, and it was unlikely that the security forces would continue to seek him at his family home given his family could simply have stated he was abroad.
- (i) There was no press coverage of any raid on his local HDP office in September 2019.
- (j) The evidence from his sister-in-law, Hadiye Ozkan, a recognised refugee, as to the Appellant's problems with the authorities, was suspiciously detailed given she lived far from him in Turkey and had no reason to be aware of his precise difficulties, suggesting she had simply learned his account and was not a trustworthy witness.

6. In the light of those considerations, the Tribunal concluded that the Appellant would not face any risks on return: indeed even if it was accepted he had previously been detained, that was essentially for having been in the wrong place at the wrong time and would not be a matter that would concern the authorities. There was no evidence that simply being a member of the HDP, is a reason to be arrested, detained and ill-treated.

7. Grounds of appeal contend that

- (a) The finding that HDP supporters would not be at risk of persecution generally overlooked relevant country evidence showing that they were seen as terrorists, their activities de facto criminalised, with tens of thousands of members imprisoned and even bare supporters facing detention and violence, followed by release if the authorities could not find anything to warrant further action.
- (b) The finding that the Appellant would not have received a membership card in the circumstances that he did was inconsistent with the country evidence cited in the Respondent's refusal letter, which showed that cards were not routinely issued to all members but were provided to all those carrying responsibilities at a local and regional level.
- (c) Material evidence had not been considered, including letters from the HDP. So too had the Appellant's mention of going to hospital for a check-up at interview.
- (d) The finding in relation to rejecting the Appellant's formal HDP membership was unclear, vaguely stating that "his other positions are difficult to reconcile with him becoming a formal member".
- (e) The finding that the authorities had acted within the law in 2014 was inconsistent with his actual evidence of his treatment, including having been detained and mistreated absent evidence of criminal activity.
- (f) Reliance on the Appellant's ability to visit France and return to Turkey in 2018 as suggesting he was not of interest to the authorities failed to take account of the fact that this predated the incident that impelled his flight in September 2019.
- (g) There was public domain media evidence reporting the September 2019 raid on the HADEP office, and whilst it had not been before the Tribunal, it should be admitted as a matter of fairness given that the issue had not been raised by the Respondent or at the hearing.

(h) There had been no assessment of the risks faced by the Appellant, bearing in mind his family's profile that was not gainsaid by the Tribunal, having regard to the Country Guidelines in IK Turkey CG [2004] UKIAT 00312.

8. The First-tier Tribunal granted permission to appeal to the Upper Tribunal on 30 June 2022.

### **Decision and reasons**

9. Before me the parties were agreed that the First-tier Tribunal had committed material errors of law, in particular in failing to have proper regard to the scope of the country evidence before it.

10. I consider the parties were right to do so. The decision below is flawed, because

(a) Material country evidence has been overlooked or misunderstood. The 2019 Fact Finding Mission records that several sources stated that HDP members/supporters were sometimes seen as supporters of the PKK, and thus supporters of terrorism; an Amnesty International source believed that "Activism on behalf of the HDP has become de facto criminalized as support for terrorism with many unfair cases brought where there is no attempt to link people to violent acts or any other internationally recognisable offences," a human rights lawyer observed that simple leafleting can lead to arrest, and a MP stated there had been "arbitrary arrests". It notes that release from detention can take place after violence and insults, but the mistreatment prior to release is plainly potentially serious enough to amount to an ECHR Art 3 violation, and thus persecution. There is ample evidence in the report of extrajudicial mistreatment by the police.

(b) Specifically on the subject of membership cards, the Canada IRB source referenced in the refusal letter states that "[t]he HDP's membership card systematically includes a picture and is only given to political and administrative responsible [persons] of the party, at a local and regional level, and to all the members who carry responsibilities inside the party." So it is perfectly possible that the Appellant was seen, given his level of activism, as a person whose responsibilities merited the issue of the card. It was unduly speculative to hold that the HDP could not reasonably operate on that basis.

(c) Keene LJ in Y [2006] EWCA Civ 1223 identified a critical principle when credibility is assessed in an asylum claim, which here has been forgotten:

"The fundamental one is that he should be cautious before finding an account to be inherently incredible, because there is a considerable risk that he will be over influenced by his own views on what is or is not plausible, and those views will have inevitably been influenced by his own background in this country and by the customs and ways of our own society. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. Findings are made based on plausibility

without regard to the fact that a politically committed person may well take risks in the course of promoting strongly held beliefs. It is therefore important that he should seek to view an appellant's account of events, as Mr Singh rightly argues, in the context of conditions in the country from which the appellant comes. The dangers were well described in an article by Sir Thomas Bingham ... from an article in Current Legal Problems ...

‘An English judge may have, or think that he has, a shrewd idea of how a Lloyds Broker or a Bristol wholesaler, or a Norfolk farmer, might react in some situation which is canvassed in the course of a case but he may, and I think should, feel very much more uncertain about the reactions of a Nigerian merchant, or an Indian ships' engineer, or a Yugoslav banker. Or even, to take a more homely example, a Sikh shopkeeper trading in Bradford. No judge worth his salt could possibl[y] assume that men of different nationalities, educations, trades, experience, creeds and temperaments would act as he might think he would have done or even - which may be quite different - in accordance with his concept of what a reasonable man would have done.’”

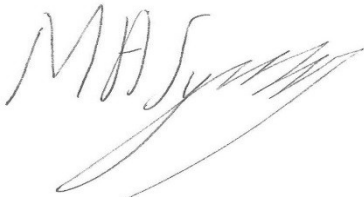
- (d) The security forces of repressive regimes may well act in a way that seems to the objective bystander to be arbitrary. As the Tribunal remarked in Suleyman (16242; 11 February 1998): “It is clear to us that a repressive regime ... may well act in ways which defy logical analysis. A person who is genuinely a victim of such a regime may well find that the partial account he is able to give of its activities as they have affected him is not something which will stand up to a strictly logical analysis. The regime may seem to govern by confusion; it may engage in other activities, of which the Appellant knows nothing; it may simply behave in a way which a person sitting in safety in the United Kingdom might regard as almost beyond belief”. The Tribunal below failed to take this important principle of assessing credibility in asylum claims, which is a specific manifestation of the broader point made in Y, into account.
- (e) The Country Guidelines in IK (Turkey) CG [2004] UKIAT 00312 remain extant. Relevant considerations are that the timing of arrests and detention may be of no particular significance, and that family connections with separatist organisations must be assessed, this latter consideration being a particularly relevant factor. Evidence of the authorities taking an interest in an asylum seeker following their departure from Turkey is of particular importance. These considerations were overlooked.
- (f) It was in the particular circumstances of this case unfair to take the point that the raid on the HDP office was not corroborated by media reports. The Fact-Finding mission itself referred to HDP meetings frequently being raided by the police, and a representative of the Truth, Justice and Memory Centre is reported as saying that “in the run-up to the elections ... HDP buildings will probably be raided by the police, people will be targeted, arrested and released. In local and general elections, hundreds of offices and buildings have been raided.” Given this material it was reasonable for the Appellant’s representatives, absent specific

challenge, not to think it necessary to corroborate this specific event, which, the country evidence indicates, is not in fact implausible. It is accordingly appropriate to admit into these proceedings the evidence of the particular raid on the HDP office in Corlu from the Turkey Forum Daily Human Rights Report of 6 September 2019, recording events of the previous day.

11. Those matters aside, the only remaining findings relate to relatively minor discrepancies which would not have justified rejection of the Appellant's account taken alone. I should note that it seems a little odd, given the weight that the Respondent in particular frequently attaches to *discrepancies* in asylum seeker's account, for a Judge to take the view that extreme *consistency* counts against a person's credibility. One can never rule out the possibility that a witness's evidence has been rehearsed, but given that the Appellant's sister-in-law is herself a recognised refugee, her evidence deserves to be treated with respect, at least as a starting point.
12. I conclude there are significant errors of law present in the First-tier Tribunal's decision that it must be set aside. Given the scale of the fact finding when this appeal is re-heard, there is no alternative than to remit it for re-hearing before the First-tier Tribunal.

Decision:

The decision of the First-tier Tribunal contained material errors of law. I accordingly set it aside and remit the appeal for re-hearing.



Deputy Upper Tribunal Judge Symes  
Immigration and Asylum Chamber

15 June 2024