Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08019/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 11th September 2018	**On 04th October 2018**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

ES
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Griffiths, Counsel, instructed by Montague Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Turkey born in 1985. The appellant entered the UK clandestinely in September 2009 but then left in October 2009. He arrived again in the UK on 15th January 2017 and claimed asylum on 3rd February 2017. This claim was refused in a decision of the respondent dated 4th August 2017. His appeal against the decision was dismissed by

First-tier Tribunal Judge Beach in a determination promulgated on the 28th November 2017.

2. Permission to appeal was granted by Designated First-tier Tribunal Judge McCarthy on 3rd January 2018. I found that the First-tier Tribunal had erred in law for the reasons set out in my decision which is appended as Annex A to this decision. The remaking hearing was initially listed for 26th June 2018 but had to be relisted due to problems with the wrong interpreter having been booked. I now remake the appeal. I need to remake findings on the contended detention in 2016 and what would happen to the appellant on return to Turkey, and then combine these with the preserved findings from the First-tier Tribunal to determine the appeal. At the end of the hearing I gave permission for Ms Griffiths to make further written submission on the issue of internal relocation within 7 days which should be sent to the respondent as well as the Upper Tribunal. Mr Kotas declined the offered option to make submissions in response to the submissions of Ms Griffiths.

Evidence & Submissions – Remaking

3. In summary the evidence of the appellant in relation to the issues that need to be remade is as follows. He gave his oral evidence through a Turkish interpreter whom he confirmed he could understand, and this is combined with his written evidence set out in his two statements which he confirmed to be true and correct.

4. On 26th November 2016 the appellant says he was detained for two days and very badly tortured, and threatened with death if he did not agree to become an informer at the gendarme station in his village of Bagliisa, in the district of Karlova in the province of Bingol in the South East of Turkey. He says that he did not say he was detained for 7 days in 2016 at his screening interview, and it must have been an error by the interviewing officer if this is what is recorded. He was detained for 2 days, as set out in his full interview and statements. He did say he was detained for 7 days in 2014 however.

5. He says during this detention he was blindfolded and taken to a building after leaving the HDP branch in Karlova. His finger prints were taken and they requested his identity papers. He says that the gendarmes knew who he was, and said he was involved with the PKK because of his family, and particularly his nephew. They knew he was active in HDP; were aware of his past detentions and had other information about him. He says he knows that his friend Kamal informed on him to the gendarmes who raided his home told his father this. He refused to become an informer as he said he had no links with the PKK. He then had to sign at the gendarme station every week. He was not charged as there was no evidence to bring a court case and for him to be formally arrested. He signed on at the gendarme station on three occasions and was asked questions about the PKK on each occasion, but said he had no information as he was not involved each time. The gendarmes would beat him as a result but could not charge him

with anything as there was no evidence to take to court. He says he was not injured badly as a result of the torture when he was detained for two days, and just attended a private doctor who gave him some creams and painkillers for bruising. He did not attend a doctor for his physical or psychological injuries in the UK either as this was not necessary.

6. The appellant maintains that if he is returned to Turkey he would be stopped and questioned on arrival in Turkey. His detention history would then be revealed, and he would be further detained, interrogated and tortured. Wherever he relocated his record would go with him due to the Muhtar registration system and he would be at risk of further detention and ill-treatment so he could not find safety by relocating. He understands that the gendarmes are conducted a harsh offensive in his village, and that many people have been arrested and have fled the area. His family remain in the village, and have not moved because they believe things would be the same for them wherever they went in Turkey.

7. With respect to the 2016 detention Mr Kotas submits for the respondent that weight should be given to the fact that at the screening interview the appellant said he had been detained for 7 days on this occasion, and then changed his history to this detention being 2 days in the subsequent interview and statements. It is argued that it was not plausible that he would be asked to work for the authorities if he was viewed as being a PKK sympathiser, nor that he would have been let go if he refused to act as an informer for the gendarmes. The witness evidence of MS confirming that the appellant was detained in 2016 is not first hand as MS was in the UK claiming asylum at the time it took place. These matters, combined with the fact that the appellant implausibly did not claim to have any substantial injuries after being tortured and the fact that his family had remained in the village, should lead to the conclusion that this incident did not take place.

8. It is submitted that it was not plausible that the authorities would have any interest in the appellant if he were returned to Turkey as he had no position in the HDP, and clearly was not at risk of persecution due to events prior to 2010 as he returned to Turkey at that time. He is Kurdish, but, as submitted above, he was not detained in 2016 and his 2014 detention was not a targeted arrest but just the appellant being held as part of a general round up. It is now 4 years on from the untargeted 2014 detention. It is argued that the appellant has not been subjected to a severe degree of ill-treatment; he has not been under surveillance and it is not plausible he was asked to be an informer; he is not an Alevi or a draft-evader and there is no arrest warrant for him. It is also argued that the Country Policy and Information Note Version 2 August 2017 states that generally an ordinary member of HDP would not come to adverse attention of the authorities on account of their political beliefs, and it is only the senior members who might be suspected of involvement with the PKK or support for autonomy for the Kurdish people. Further relatives of members or supporters of the PKK are also only likely to face harassment or discrimination and not persecution from the authorities, see Turkey:

Kurdistan Workers' Party (PKK) Version 2 August 2017, and so his nephew being a refugee is of little relevance particularly as the nephew travelled to the UK before the appellant. It is not plausible that the appellant would be detained at the airport given his low political profile, although it is accepted that there is the capacity for him to be identified at the airport.

9. Ms Griffiths relies upon skeleton argument, oral submissions and her further submissions on internal relocation. With respect to the 2016 arrest she says that the appellant has given consistent evidence about this matter in his asylum interview and statements, and has always said that it was an error for the interviewing officer to have recorded that he was detained for 7 days in 2016 in his screening interview records, as this was the period he gave for his 2014 detention. The appellant gives full descriptions of both detentions at his interview. It would strange if he were making it up that he would chose to reduce the length of the 2016 detention from the initial recorded 7 days to 2 days if this were not the truth. It is plausible that his full evidence was not recorded at the initial screening interview. It is also plausible that he might well have been detained in 2016 as after the July 2016 coup the country of origin materials show that there were more actions against suspected opponents belonging to Kurdish organisations and those believed to have PKK links. It is clear that the information that the appellant was informed upon by his friend Kemal came from the gendarmes, as he says this at interview and in his evidence to the Upper Tribunal, and this too is consistent with the country of origin evidence about detainees being forced to incriminate others. The witness evidence of MS is not first-hand, but it is of some weight as he himself was found to be a credible witness by a First-tier Tribunal Judge. It is contended that the appellant should be found to be credible and given the benefit of the doubt, as his statements are reasonably internally consistent, detailed, coherent, plausible and are consistent with the country of origin information, in accordance with paragraph 339L(iii) of the Immigration Rules and the Home Office Asylum Policy Instructions Assessing Credibility and Refugee Status.

10. In relation to risk on return to Turkey Ms Griffiths submits that it is clear that although the official state of emergency has ended in Turkey more power has been consolidated in the President and state, and there has been an enduring backslide in respect for human rights. The fact that the appellant has already been subjected to persecution in Turkey should be regarded as a serious indication that he would have a well founded fear of persecution if returned unless there are good reasons to consider that such persecution would not repeat itself, applying paragraph 339K of the Immigration Rules.

11. It is clear from the case of IK that the appellant could be questioned at the airport as a failed asylum seeker without a passport, and also clear that he must be expected to tell the truth about his history of detentions connected with his involvement with Kurdish politics. Applying the risk factors in IA it is submitted that it is not important that the appellant does not have a prominent role in HDP or the PKK: it would suffice that he was a

Kurd who left Turkey in 2016 with his background, absconding whilst on reporting conditions having been asked to be an informer. It is notable that the preserved findings of the First-tier Tribunal include that the appellant was detained in 2008 and in 2014 as a suspected supporter of the PKK: and it therefore follows that ordinary members of HDP (such as this appellant) with this profile can be detained on this basis. It is submitted that he was detained in 2016 as this profile as a PKK supporter was wrongly confirmed by Kemal. He also has a nephew who has been recognised as a refugee in the UK. The appellant is therefore at real risk of being handed over to the anti-terror police and facing ill-treatment during his detention and interrogation at that time.

12. It is submitted that even if the appellant were to get through the airport without incident that he would not be able to find safety internally within Turkey if a well founded fear of persecution is accepted for the appellant in his home area. This is because he fears state persecution from the Turkish authorities. This is set out in the various Home Office Country Policy and Information Notes firstly "Turkey: Kurdish Political Parties" Version 3 August 2018 at paragraph 2.6.1; secondly "Kurds" Version 2 September 2018 at 2.6.1; and thirdly "HDP" Version 1 March 2016; and "Turkey: Kurdistan Workers Party" Version 2 August 2017.

13. Further the evidence in IK at paragraphs 70, 113 and 114 is that if someone has been of adverse interest to the authorities in their home area, even if they were not charged with any offence, that there could be a marker on their NUFUS file so if they register with the Mukhtar in a new area and apply for a new NUFUS card that this may come to light. It would also be unduly harsh to live without a NUFUS card in a new area. In IK at paragraph 118 it is stated that a Tribunal should generally proceed on the basis that information known in the home area would be known at the airport and in any new area of relocation, so the question is whether this information would lead to persecution outside of the home area. At paragraph 119 it was concluded that the question is whether it would be perceived that an appellant had a link with the PKK or other main Kurdish parties, and sympathy with the PKK. If there is such a perceived link and sympathy then there is no internal relocation alternative within Turkey. As this is the case with this appellant then there is no internal flight alternative, particularly as in accordance with SA (political activist - internal relocation) Pakistan [2011] UKUT 30 he cannot be required to cease his political activities. It is noted that the situation at the time IK was written was one where the human rights situation in Turkey was moving in a far more positive direction than at the current time, see the European Commision: Turkey 2018 Report, which documents increased reports of ill-treatment and torture against critical voices. This is consistent with the CPINs set out above, and the evidence about the targeting of political Kurds as well as suspected Gulenists after the failed coup.

Conclusions – Remaking

14. In the decision in IA & Ors (Risk -Guidelines – Separatist) Turkey CG [2003] UKIAT 34 the Upper Tribunal gave the following guidance as to risk factors:

15. "The following are the factors which inexhaustively we consider to be material in giving rise to potential suspicion in the minds of the authorities concerning a particular claimant.

a) The level if any of the appellant's known or suspected involvement with a separatist organisation. Together with this must be assessed the basis upon which it is contended that the authorities knew of or might suspect such involvement.

b) Whether the appellant has ever been arrested or detained and if so in what circumstances. In this context it may be relevant to note how long ago such arrests or detentions took place, if it is the case that there appears to be no causal connection between them and the claimant's departure from Turkey, but otherwise it may be a factor of no particular significance.

c) Whether the circumstances of the appellant's past arrest(s) and detention(s) (if any) indicate that the authorities did in fact view him or her as a suspected separatist.

d) Whether the appellant was charged or placed on reporting conditions or now faces charges.

e) The degree of ill treatment to which the appellant was subjected in the past.

f) Whether the appellant has family connections with a separatist organisation such as KADEK or HADEP or DEHAP.

g) How long a period elapsed between the appellant's last arrest and detention and his or her departure from Turkey. In this regard it may of course be relevant to consider the evidence if any concerning what the appellant was in fact doing between the time of the last arrest and detention and departure from Turkey. It is a factor that is only likely to be of any particular relevance if there is a reasonably lengthy period between the two events without any ongoing problems being experienced on the part of the appellant from the authorities.

h) Whether in the period after the appellant's last arrest there is any evidence that he or she was kept under surveillance or monitored by the authorities.

i) Kurdish ethnicity.

j) Alevi faith.

k) Lack of a current up-to-date Turkish passport.

l) Whether there is any evidence that the authorities have been pursuing or otherwise expressing an interest in the appellant since he or she left Turkey.

m) Whether the appellant became an informer or was asked to become one.

n) Actual perceived political activities abroad in connection with a separatist organisation.

o) If the returnee is a military draft evader there will be some logical impact on his profile to those assessing him on his immediate return. Following Sepet of course this alone is not a basis for a refugee or human rights claim."

16. The country guidance in IK (Returnees – Records – IFA) Turkey CG [2004] UKIAT 312 is as follows:

> **"Summary of Generic Conclusions**
>
> 133. The following is a summary of our main conclusions in this determination.
>
> 1. The evidence of Mr Aydin (paragraph 32) accurately describes the defined and limited ambit of the computerised GBT system. It comprises only outstanding arrest warrants, previous arrests, restrictions on travel abroad, possible draft evasion, refusal to perform military service and tax arrears. "Arrests" as comprised in the GBTS require some court intervention, and must be distinguished from "detentions" by the security forces followed by release without charge. The GBTS is fairly widely accessible and is in particular available to the border police at booths in Istanbul airport, and elsewhere in Turkey to the security forces.
>
> 2. In addition, there is border control information collated by the national police (Department for Foreigners, Borders and Asylum) recording past legal arrivals and departures of Turkish citizens, and information about people prohibited from entering Turkey as a result of their activities abroad, collated by MIT.
>
> 3. The Judicial Record Directorate keeps judicial records on sentences served by convicted persons, separate from GBTS. The system is known as "Adli Sicil." It is unlikely that this system would be directly accessible at border control in addition to the information in the GBTS.
>
> 4. The Nufus registration system comprises details of age, residence, marriage, death, parents' and children's details, and religious status. It may also include arrest warrants and if any of the people listed have been stripped of nationality. There is no evidence that it is directly available at border control.
>
> 5. If a person is held for questioning either in the airport police station after arrival or subsequently elsewhere in Turkey and the situation justifies it, then some additional inquiry could be made of the authorities in his local area about him, where more extensive records may be kept either manually or on computer. Also, if the circumstances so justify, an enquiry could be made of the anti terror police or MIT to see if an individual is of material interest to them.

6. If there is a material entry in the GBTS or in the border control information, or if a returnee is travelling on a one-way emergency travel document, then there is a reasonable likelihood that he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation.

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

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

9. The Turkish Government is taking action in legislative and structural terms to address the human rights problems that present a serious obstacle to its membership of the EU. It has made its zero tolerance policy towards torture clear. However the use of torture is long and deep-seated in the security forces and it will take time and continued and determined effort to bring it under control in practice. It is premature to conclude that the long established view of the Tribunal concerning the potential risk of torture in detention as per **A (Turkey)** requires material revision on the present evidence. However the situation will require review as further evidence becomes available. For the time being as in the past, each case must be assessed on its own merits from the individual's own history and the relevant risk factors as described in paragraph 46 of **A (Turkey).**

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

11. A young, fit, unmarried person, leaving his home area and seeking unofficial employment in a big city, may not feel the need to register with the local Mukhtar, at least at the outset. Many do not. However, given the range of basic activities for which a certificate of residence is needed, and which depend upon such registration, we conclude that it would in most normal circumstances be unduly harsh to expect a person to live without appropriate registration for any material time, as a requirement for avoiding persecution. This does not necessarily preclude the viability of internal relocation for the reasons described in paragraph 133.13 below.

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

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

17. I preserved a number of findings of the First-tier Tribunal which I set out as follows:

- The appellant is accepted as being a supporter of pro-Kurdish parties, the DTP, BDP and HDP because of his knowledge.
- It is accepted that the appellant was harassed in 2004 because the authorities wished to deter him from supporting the PKK.
- It is accepted that he was beaten by soldiers because he was a Kurdish farmer who knew the area well in 2008, and fears that he might be assisting the PPK.
- It is found that in 2009 the appellant's father was detained for his own reasons, and not because of the appellant, and that at that point in time the appellant did not demonstrate having a well-founded fear of persecution due to his return to Turkey.
- It is found that the appellant was detained, but not singled out for detention, at a political demonstration in 2014, and that he was questioned and ill-treated in detention for a period of 7 days.
- It is not accepted that the appellant was informed on by his friend, K, and it is not accepted that the appellant's home had been raided in the current offensive in his village.

18. As set out above I need to remake findings on the contended detention in 2016 and whether the appellant has a well founded fear of persecution on return to Turkey.

19. I am satisfied that the appellant has shown that he was detained for two days on 26th November 2016, as I find this to be credible when all evidence is considered in the round for the following reasons. I accept that the appellant has been largely consistent about the length of period of this detention, always stating this was two days and not seven, with the only inconsistency being what is recorded in the screening interview. It is plausible that at this short interview the interviewing officer confused information about the 2014 detention, which is not mentioned in the

notes, and it would be odd if the appellant were making up a story that he would have chosen to reduce the time he spent in detention in the period most proximate to his departure from Turkey. The appellant has given detailed initial accounts of his 2014 and 2016 detention at his full asylum interview before the interviewing officer goes on to ask additional questions. It is, I find, plausible that the gendarmes would ask a person who they believe to have PKK links to act as an informer for them; and also that the gendarmes let him go even though he refused if they had insufficient information to have him formally arrested by a court. This is consistent with the background information that I set out below, which shows that the claimed history of detention of a person such as the appellant at that point of time was highly plausible. The appellant's account is also supported by his nephew, who is a someone who has been granted refugee status, although I do give less weight to this evidence as MS was not present in Turkey at that time.

20. The country of origin materials undoubtedly demonstrate that at the time of the contended detention in November 2016 that the PKK and related armed group had stepped up attacks and escalated violence. The government was in response conducting extensive security and military operations against the PKK, including air strikes on their bases in Turkey and Iraq and active security operations in Turkey which led to the death and injury of civilians. The PKK then responded by committing terrorist acts in Istanbul and Ankara. There were many credible reports of severe human rights violations committed by the security forces, including torture, ill-treatment, disappearances and arbitrary arrests. The Council of Europe Commissioner of Human Rights in submissions to the European Court of Human Rights in April 2017 stated that there was a widespread perception that the anti terror operations were "collective punishment of the civilian population who were allegedly automatically branded as PKK-sympathisers by the security forces", see the many credible sources cited at section 5, "Situation in the east and south-east", of Country Policy and Information Note Turkey: Kurdistan Workers' Party (PKK) August 2017 Version 2. Material in section 6 of that document sets out that it was possible to detain an individual for up to 30 days without charge following the state of emergency as a result of the July 15th 2016 coup, and that there were credible reports of torture in detention. In the Country Policy and Information Note Turkey: Kurdish political parties August 2017 Version 2 section 9 it is clear that thousands of members of pro-Kurdish parties have been detained in 2016, with many more being detained than formerly arrested and charged by a court, see paragraph 9.1.14 citing figures for 2015 of 2308 members being taken into custody between July and October 2015 and 542 arrested.

21. The final question to be answer is whether the appellant has a well founded fear of persecution if returned to Turkey at the current time. Paragraph 339K of the Immigration Rules requires that the fact that I have found that the appellant has been subjected to persecution in the past, as I have found that he has been detained and tortured by the gendarmes for his imputed political opinions, that I must find that he has a well founded

fear of future persecution unless there are good reasons to consider that that persecution would not be repeated.

22. I consider the application of the two sets of country guidance, IA and IK, when looking at whether this past persecution is likely to repeat itself. I accept the submission of Ms Griffiths that the country of origin situation is, as a generalisation, not characterised with the optimism for improvement as it had been at the time when these two cases were determined. It is no longer the case that Turkey is addressing its human rights situation with a zero-tolerance policy towards torture in order to qualify for EU membership. The European Commission Turkey 2018 Report, as set out in the further submissions is one which shows Turkey moving away from the EU, and backsliding regarding civil society and human rights. In this context I find the guidance in these cases to remains pertinent.

23. Applying the IA risk factors I find that the appellant is seen by the gendarmes in his home area as a person who is probably a PKK supporter: they detained him in 2008 on suspicion of assist them; they detained him in 2014 at a demonstration they regarded as being supportive of the PKK; and they accused him of supporting the PKK whilst he was detained in 2016 and tried to get information about them, wanting him to inform on others because they believed the appellant had those links. The appellant left Turkey just over a month after he was released from detention at the end of November 2016, and I accept that there was a direct link between this last detention and his departure, and at the time when he left he was subjected to reporting conditions which he broke by leaving the country. I find that the appellant has been severely ill-treated during his periods of detention: he has been by being stripped, beaten and tortured with cold water. I do not find it indicative that he was not badly tortured that he did not need hospital treatment after this treatment as there is no reason why this would be the case given what he says happened to him. The appellant has a nephew who is a recognised political refugee, who left Turkey recently in May 2016 and who had lived with the appellant in the same house prior to this. I find that the appellant therefore also has a family connection to separatism. He is accepted as being Kurdish, and does not hold a Turkish passport. I have preserved the finding from the First-tier Tribunal that the appellant was not informed on by his friend, K, from paragraph 53 of the decision of the First-tier Tribunal.

24. On the basis of these risk factors, and particularly in the context of his past history, I am satisfied that there is a real risk that the appellant would be detained and tortured again on return to Turkey in his home area on account of his actual and imputed political opinions. Whilst I accept this is a case which involves state persecution it is clear from points 12 and 13 of the guidance in IK that the risk will mostly be at its highest in the home area, and that this is all the more the case where that area is in an area of conflict in the south-east of Turkey, and that whilst it must be assumed that the same information would be available at the airport and in an area of internal relocation that this would not always result in there being a real risk of serious harm. I also take note of IK when considering whether the

appellant will be at real risk of detention at the airport on return. I note that as he would be travelling on a one-way emergency travel document he will be identifiable as a failed asylum seeker and could be sent to the airport police station for further investigation.

25. In the context of there having been a period of mass arrests in Turkey of persons who are believed to be PKK sympathisers, as well as of Gulenists, since the July 2016 failed military coup I find that the appellant has shown to the lower civil standard of proof that he has a well founded fear of persecution throughout Turkey on account of his actual political support for legal Kurdish parties and his imputed support for the PKK for the following reasons. As is set out at paragraph 2.4.15 of Home Office Country Policy and Information Notes "Turkey: Kurdish Political Parties" Version 3 August 2018 in the context of the current post failed coup political climate and the break down of the ceasefire with the PKK in 2015, on the basis of the various credible and respected country of origin reports set out in the sections 2.4 and 7, if a person has "come to the adverse attention of the authorities because of suspected involvement with the PKK or support for autonomy for Kurdish people, they may be at risk of serious harm or persecution". In the context of this appellant's entire history, and in particular the three incidents where he was seen to have PKK connections by the authorities and was subjected to torture for these perceived political views and his family ties with a recently recognised refugee, I find that he has shown that he has a current well-founded fear of persecution throughout Turkey and not simply in his home area.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal dismissing the appeal.

3. I remake the appeal by allowing it on asylum and human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: Fiona Lindsley Date: 24th September 2018
Upper Tribunal Judge Lindsley

Annex A: Error of Law Decision

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Turkey born in 1985. The appellant entered the UK clandestinely in September 2009 but then left in October 2009. He arrived again in the UK on 15th January 2017 and claimed asylum on 3rd February 2017. This claim was refused in a decision of the respondent dated 4th August 2017. His appeal against the decision was dismissed by First-tier Tribunal Judge Beach in a determination promulgated on the 28th November 2017.

2. Permission to appeal was granted by Designated First-tier Tribunal Judge McCarthy on 3rd January 2018 on the basis that it was arguable that the First-tier judge had erred in law in concluding that the appellant would not be at risk of ill-treatment or detention on return to Turkey given that it was accepted that he was a supporter of pro-Kurdish political parties and given that he had been identified as having taken part in a pro-Kurdish demonstration; and given that it was arguable that Judge Beach had failed to deal with updating country of origin information which indicated a crackdown on Kurds by the Turkish government.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions – Error of Law

4. In the grounds of appeal the appellant argues that his Kurdish identity is accepted at paragraph 45 of the decision, and that his knowledge indicated that he was a supporter of Kurdish political parties, see paragraph 47 of the decision. As such it is clear that it was accepted that the appellant was likely to be perceived as a left- wing Kurd who sympathises with the PKK. This view is supported by the fact that at paragraph 48 of the decision the First-tier Tribunal finds that he was harassed to deter him from assisting the PKK.

5. It was contended that some of the factual findings against the appellant were not rational for instance to have found that the appellant had not returned to Turkey because his father was detained, although it was found that his father was in fact detained. Also at paragraph 50 of the decision there is a vague finding that the appellant had been detained and ill-treated “to some extent” which is unsatisfactory.

6. The First-tier Tribunal is also argued to have erred by failing to look at the risk factors in the guidance case of IA HC KD RO HG (Risk-Guidelines-Separatist) Turkey CG [2003] UKIAT 34. If this had been done then it would have been seen that he has many risk features on the findings of the First-tier Tribunal: a family connection with the PKK; Kurdish ethnicity; two

detentions accepted by the First-tier Tribunal; an acceptance of ill-treatment; no current Turkish passport; the family come from the south-east of Turkey where there has been recent conflict; and the appellant was asked to be an informer. The First-tier Tribunal failed further to consider the current situation in Turkey where there is a state of emergency. This means it is more likely that the appellant will be detained on arrival and his background checked, and he will suffer ill-treatment due to his previous political actions and his family history.

7. I indicated to Mr Kotas that I was, on reading of the papers, concerned about the failure to determine the appeal with reference to the guidance case of IA & Others, and also with the findings at paragraph 50 that the appellant was not detained in 2016 due to the quality of the reasoning. I asked that he address me on these two specific issues.

8. Mr Kotas argued that the finding that the 2016 detention had not taken place was adequately reasoned as it was said that there was no trigger for the arrest; no evidence from the witness who was not in Turkey at that point; and because of a difference between what was said at the screening interview and full asylum interview with respect to the number of days of the detention. He argued that IA & Others risk factors were sufficiently considered in the decision as a whole or were not sufficiently present (for instance a high degree of torture) so it was not important that they were not set out in the conclusion.

9. In reply Mr Sandu argued that the reasoning with respect to the 2016 detention was not sufficient. No weight was given to the fact that previous detention and ill-treatment for similar reasons had been accepted, along with the concerns I had identified above.

10. At the end of the hearing I indicated that I found that the First-tier Tribunal had erred in law for the reasons I now set out below. The parties had initially favoured returning the matter to be re-made in the First-tier Tribunal but when I said that I thought it appropriate to re-make it in the Upper Tribunal both agreed that this was an acceptable course. The matter had then to be adjourned at this stage as we had no Kurmanji interpreter available.

Conclusions – Error of Law

11. At paragraphs 34 to 40 the First-tier Tribunal sets out some of the background evidence. The country guidance case of IA & Others is cited at paragraph 41 of the decision, with IK (Returnees- Records-IFA) Turkey CG [2004] UKIAT 312 being set out at paragraph 42.

12. As argued by the appellant the First-tier Tribunal does find that he is a supporter of two pro-Kurdish parties, the DTP and the BDP because of his knowledge, see paragraph 47 of the decision. It is also accepted that the appellant was harassed in 2004 because the authorities wished to deter him from supporting the PKK. I also find that it was accepted on the lower

civil standard of proof by the First-tier Tribunal that he was beaten by soldiers because he was a Kurdish farmer who new the area well in 2008, and fears that he might be assisting the PPK.

13. It is found that in 2009 the appellant's father was detained for his own reasons, and not because of the appellant, and that at that point in time the appellant does not demonstrate having a well-founded fear of persecution due to his return to Turkey, see paragraph 49 of the decision. I find that these findings are sufficiently and sustainably reasoned.

14. The First-tier Tribunal finds that the appellant was detained, but not singled out for detention, at a political demonstration in 2014, and that he was questioned and ill-treated in detention, see paragraph 50 of the decision.

15. At paragraph 51 of the decision it is not believed by the First-tier Tribunal that the appellant was detained in 2016 because he is said to have been inconsistent and vague, however there are no examples of the appellant being vague and I find that the only inconsistency identified is between the number of days put forward for the length of this detention at the screening interview (7) and the full asylum interview (2). Given the care that must be taken in making negative findings based on screening interview evidence and given there is a failure to consider whether this incident is to be seen as consistent with the history of a believed prior detention and other political ill-treatment from the Turkish authorities I find that the rejection of this aspect of the appellant's case is insufficiently reasoned particularly in the context of the lower civil standard of proof applicable in asylum appeals.

16. The First-tier Tribunal does not accept that the appellant was informed on by his friend, K, in a reasoned finding at paragraph 53, and there is also a reasoned finding that the appellant's home has not been raided in the current offensive in his village.

17. The First-tier Tribunal then concludes at paragraph 59 the appellant is likely to be stopped and questioned at the airport on return to Turkey because he left without documents. However, he is found not at risk of ill-treatment or detention because he was lasted detained in 2014; he only has a nephew who has been granted asylum (and there is no evidence of why this was the case although it was said it was for similar reasons); and there is no evidence of harassment of other family members. I find that this paragraph was insufficiently reasoned and unlawfully failed to apply the risk categories in IA & Others in full given the finding that the appellant would be detained and questioned on arrival.

18. The decision therefore has to be remade on the basis of the sound findings of the First-tier Tribunal as identified above with a re-examination of the contended detention in 2016 and a remaking of the final conclusion as to whether the appellant is at real risk of serious harm on return in accordance with IA & Others.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. I set aside the decision of the First-tier Tribunal dismissing the appeal.

3. I adjourn the remaking of the decision to the first available date before me.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: Fiona Lindsley Date: 24th April 2018
Upper Tribunal Judge Lindsley