Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/02312/2020
PA/52692/2020 (UI-2021-000985)

THE IMMIGRATION ACTS

Heard at : Field House	**Decision & Reasons Promulgated**
On : 6 May 2022	**On : 27 June 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DO
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer
For the Respondent: Ms R Chapman, instructed by Bindmans Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing DO's appeal against the respondent's decision to exclude him from the protection of the Refugee Convention under Article 1F(b) and to exclude him from Humanitarian Protection.

2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and DO as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

Background to the claim

3. The appellant is a citizen of Turkey of Kurdish ethnicity, born on 25 September 1990. He arrived in the United Kingdom on 22 July 2014 and claimed asylum as a Syrian national in the name of DO with a date of birth of 28 March 1990. His claim was refused on 5 December 2014 as it was not believed that he was a Syrian national. He appealed against that decision.

4. Whilst awaiting his appeal hearing the appellant was arrested for fraud and was convicted on 2 November 2016 on three counts of fraud and two counts of possessing a false identity document, for which he was sentenced to ten months' imprisonment. The conviction related to his use of a false Israeli passport to open a bank account in the UK and the making of false representations to banks that the passport was genuinely held.

5. On 11 October 2016 the appellant was arrested on the basis of an extradition warrant, in the name of OI, a Turkish national born on 1 January 1985, for his extradition to Turkey, in relation to three convictions in Turkey for offences of theft/ fraud committed in 2004/5 and 2010. The extradition hearing took place on 30 May 2017 before District Judge Devas at Westminster Magistrates' Court. The Judge had before him extensive evidence including a medical report from Dr Juliet Cohen who had diagnosed him with PTSD. The Judge noted that the appellant had spent periods of time in different prisons in Turkey, from September 2005 until April 2007 and from August 2007 until October 2009, that his health had deteriorated following his release in 2007 at which time he had been diagnosed with bone marrow cancer, that he had been shot eight times by the police in an incident in February 2011 and that he had spent a further period in prison from 12 to 27 December 2013. The Judge found that the appellant had suffered significant ill-treatment in prison in Turkey on the basis of being someone of Kurdish ethnicity who was a member of the LGBT community and concluded that he would be subject to inhuman or degrading treatment if returned to Turkey, in breach of Article 3 of the ECHR.

6. On the basis of the extradition ruling dated 30 May 2017, the respondent withdrew the decision in the appellant's claim as a Syrian national on 29 June 2017.

7. On 7 July 2017 the appellant's former solicitors submitted a further statement from the appellant and requested a review of his case in light of the extradition decision, on the facts of his current claim as a Turkish national. There then followed a lengthy delay in the consideration of the appellant's claim during which time his mental health deteriorated, and he made several suicide attempts. Following judicial review proceedings challenging the delay, lodged by his current solicitors, the respondent agreed to issue a decision in the appellant's asylum claim and a consent order was issued which brought an end to the judicial review claim. The appellant's solicitors then made submissions on 17 March 2020 and produced further documents including a supplementary statement from him.

The appellant's asylum claim

8. The appellant's claim, as set out in those submissions, was made on the following basis.

9. The appellant claimed to be a Turkish national of Kurdish ethnicity who had been adopted as an infant by a Turkish Kurdish family of Jewish origin. His parents and wider family were active in Kurdish politics and whilst he was growing up his father was detained and tortured by the Turkish authorities, his village was burned down by the Turkish authorities and his uncle was arrested and sentenced to over three years' imprisonment for alleged PKK membership. He became actively interested in Kurdish politics himself when studying at university and was an active member of the Democratic Social Party. The appellant was gay and in 2003 he began a relationship with an older man whom he met when he was working at a hotel in the school holidays. He would not give the name of this man as he feared repercussions since the man's father was a powerful figure in the Turkish government. The man's father discovered their relationship and arranged for him to marry a woman.

10. On 15 February 2005 the appellant was arrested and detained by police officers who accused him of fraudulent activities, and he was taken to the police station and beaten. He was forced to admit to the offences of which he was accused to avoid his family being told that he was gay, and he was convicted and sent to prison where he served a four-month custodial sentence, during which time he was subjected to ill-treatment including sexual assault. He was released in June 2005 and was refused re-entry to his university because of his conviction. His former lover told him that his father had arranged for the arrest and conviction so as to discredit him. In September 2005 he was detained again, was accused of further crimes of fraud and was forced to sign a confession, following which he appeared in court and was then transferred to prison where he was held on remand until 1 July 2006 and then transferred to another prison and was eventually released in April 2007. His health began to deteriorate, and he was diagnosed with cancer and started chemotherapy.

11. In August 2007 he was arrested when in hospital and was taken to a court and transferred to prison where he was served papers stating that he had been convicted of a fraud related offence and had been sentenced to a five-year prison sentence. He continued to receive chemotherapy whilst in prison and was eventually released in October 2009 possibly on ill-health grounds. In February 2010 he was randomly arrested and beaten and then, after moving from Izmir to Istanbul, was visited by two plain clothed police offers and was shot eight times after trying to run away. He was then arrested and detained in prison for two months, during which time he was sexually assaulted and abused. After his release he was charged, indicated and summonsed to court for about 50 further criminal cases. He attended approximately 45 court hearings and he was usually released by the judges but was occasionally remanded into custody. On 12 December 2013 he was remanded into custody

and held in prison in Istanbul where he was repeatedly assaulted and beaten and was raped by prison officers. He was released on 27 December 2013 due to lack of evidence against him. He sought medical treatment at a clinic in Istanbul before fleeing Turkey. He travelled to Greece and obtained a counterfeit Italian ID card which he used to travel to the UK in July 2014. He was given a Syrian history and a counterfeit Syrian passport by the agent who brought him to the UK and was told to claim asylum as a Syrian national.

12. The submissions then referred to the appellant's arrest in the UK on 11 October 2016 in relation to the extradition request from Turkey and the decision of Judge Devas in the extradition proceedings whereby the appellant's account of what had happened to him in Turkey was accepted. Reference was also made to enclosed documents including: a medical report from Dr Cohen; a letter from the appellant's attorney in Turkey, Mr Oztas, which in turn enclosed a judgment of the court in Turkey and a schedule of over 80 cases relating to the appellant; a letter from the appellant's lawyer in Istanbul, Mr Mihci, enclosing further supporting documents relating to the appellant's imprisonment and charges in Turkey; and two expert reports which had been produced for the extradition proceedings from Ms Saniye Karakas and Professor Rod Morgan and accepted by Judge Devas. It was submitted that the appellant would be at risk on return to Turkey on the basis of his race, his political opinion and his sexuality.

Refusal of asylum claim

13. The appellant's asylum claim was refused by the respondent in a decision of 30 June 2020 in which it was considered that he fell to be excluded from the protection of the Refugee Convention under Article 1F(b) and, under paragraph 339D of the immigration rules, from humanitarian protection, on the basis of there being serious reasons for considering that he had committed a serious non-political crime in Turkey. The respondent issued a certificate under section 55 of the Immigration, Asylum and Nationality Act 2006, certifying that the appellant was not entitled to the protection of Article 33(1) of the Geneva Convention. The respondent noted that it was only after his arrest and his conviction for fraud that he had put forward his asylum claim as a defence for not undergoing extradition to Turkey. The respondent noted that the appellant had stated that he wished to be known by his alias, DO, due to his fear of the Turkish authorities, but considered that his reasons for so doing were unfounded as he was not being extradited. The respondent did not accept the date of birth now relied upon by the appellant given his previous use of fraudulent documents.

14. The respondent noted that there were three extradition notices at the extradition hearing. The first, dated 18 May 2016, was in regard to a conviction dated 4 April 2012 and related to an offence committed on 1 May 2010 of 'theft by using information systems' with a penalty of five years' imprisonment. It was stated that the appellant was absent from the trial on 4 April 2012. The second, dated 6 June 2016, was in regard to a conviction dated 19 July 2013 and related to an offence of 'securing benefit by using counterfeited bank or

credit cards', with a penalty of four years and two months' imprisonment. The trial date was 19 July 2013. The third, dated 3 February 2017, was in regard to a judgment made on 22 October 2009, finalised on 28 May 2014, for 'securing benefit by using counterfeited bank or credit cards' with a penalty of five years' imprisonment and 'securing unjust advantage by unlawful intervention into informatics system' with a penalty of two years' imprisonment. The respondent noted that the sentences the appellant had received were at the higher end, which indicated the seriousness of his offences. The respondent accepted that the appellant had spent time in prison in Turkey and found there to be serious reasons that he had committed serious offences in Turkey. It was accepted that he had been convicted in Turkish courts on 4 April 2012, 19 July 2013 and 22 October 2009, that the offences were serious, that fraud was a serious crime and that the offences were non-political and were committed prior to him entering the UK. The respondent considered that there was a properly administered judicial system in Turkey which followed international standards and that the convictions he received were for offences committed and not due to his ethnicity and sexuality.

15. The respondent, noting that the Turkish authorities did not appeal against the extradition judgment, rejected the appellant's claim that the Turkish authorities were relentlessly pursuing him. The respondent also rejected the appellant's claim that the reason behind his detentions and ill-treatment was due to the actions of his former partner's father who held a prominent government position, as he had put forward no evidence to demonstrate who the alleged powerful person was and had failed to explain how that person was able to exert such influence over law enforcement in different regions of Turkey. The respondent did not accept that the Turkish Government had fabricated or manipulated charges of fraud against him as a consequence of his sexuality. Neither did the respondent accept that the appellant's detentions were due to his political affiliations or activities, as his actions were at a low level and would not have brought him to the adverse attention of the Turkish authorities.

16. The respondent therefore concluded that the appellant was excluded from the protection of the Refugee Convention and from humanitarian protection and that he failed to meet the suitability requirements of paragraph S-LTR.1.6 of Appendix FM of the immigration rules. It was accepted that the appellant had been detained and subjected to mistreatment in Turkey and that he could be subject to such treatment on return, contrary to the UK's obligations under Article 3 of the ECHR. It was accepted on the basis of the appellant's medical and psychological health that if he were returned to Turkey, he could be subject to treatment engaging the UK's obligations under Article 3 (medical rights) and Article 8 (physical and moral integrity). On that basis it was considered that the appellant may qualify for a period of Restricted Leave, but such leave was not currently being granted owing to the outstanding statutory right of appeal.

Appeal to First-tier Tribunal

17. The appellant lodged an appeal against that decision, which was heard by First-tier Tribunal Judge Robinson on 8 June 2021. The appellant did not give

oral evidence in light of medical advice that it would not be in the best interests of his mental health to do so. The judge had before her a more recent report from Dr Juliet Cohen, a statement from Robert Berg a solicitor specialising in criminal law who had been instructed in the appellant's extradition case, and a statement from Nicola Babb a litigator in criminal law who had been instructed in the appellant's criminal matters in the UK. Mr Berg gave evidence at the hearing.

18. The appellant's case, before the judge, was that he was innocent of the crimes of which he had been accused in Turkey and that the offences committed in the UK were not the same or similar to those for which he had been convicted in Turkey. It was explained that the fraud counts to which he had pleaded guilty in the UK related to false representations made to banks that an Israeli passport in his possession was genuinely held and that the representations had been made solely in order to open bank accounts. There was no fraud in relation to the funds in the account which had been accepted were the appellant's own funds. On the basis of the evidence from Robert Berg and Nicola Babb, the judge accepted that claim and rejected the respondent's submission that the appellant had demonstrated a pattern of fraudulent behaviour whereby convictions in the UK followed those in Turkey.

19. In relation to the appellant's claim that the Turkish convictions arose from malicious prosecutions by the father of the man with whom he had had a sexual relationship, the judge noted that that was not a matter considered by District Judge Devas in the extradition proceedings and that it did not form part of his ruling. The judge considered the expert reports from Saniye Karakas and Mr Oztas in relation to the appellant's convictions in Turkey but did not accord any material weight to their conclusions that the prosecutions were malicious. Having had regard to the Home Office Country Policy and Information Note Turkey: Kurds, version 3.0 and the other country evidence, and considering the lack of evidence to explain why Turkey was not still pursuing the appellant following the extradition ruling in 2017 and the lack of specific evidence regarding the assertions of malicious prosecutions in the face of the accepted Turkish convictions, the judge found that the respondent had shown that it was more likely than not that the appellant had committed the crimes in Turkey as stated.

20. However, the judge concluded that the appellant's convictions did not meet the test of being serious non-political crimes under Article 1F(b) and found that it was more probable than not that the crime was not serious enough to justify the appellant's loss of protection. The judge concluded that the appellant was not excluded from the protection of refugee status and humanitarian protection, and she accordingly allowed the appeal on asylum grounds.

21. Permission to appeal against that decision was sought by the respondent on the grounds that the judge had set too high a bar for "serious" crimes and that the appellant's crimes met the threshold to be considered serious and were also sufficient to meet the higher test of particularly serious. The

application for permission was initially not admitted by the First-tier Tribunal, but was subsequently considered by the Upper Tribunal to have been in time and was admitted. In the renewed grounds to the Upper Tribunal the respondent also asserted that the judge, when looking at Article 1F(b), had erred by balancing the risk of committing further crimes in the UK against the crimes committed by the appellant whilst abroad and that the judge had conflated the evidence provided by way of Judge Devas' findings.

22. Permission was granted by the Upper Tribunal on 21 January 2022.

23. In a Rule 24 response filed on behalf of the appellant, it was submitted that the judge's finding that the appellant's crimes were not sufficiently serious to justify his exclusion from the Refugee Convention was entirely open to her on the basis of the evidence before her, the guidance from UNHCR and the Home Office and the guidance in AH (Algeria) v Secretary of State for the Home Department [2012] EWCA Civ 395. In accordance with the judgment in Smith (appealable decisions; PTA requirements; anonymity) [2019] UKUT 216, the appellant raised his own challenge to the judge's decision on the basis that she had failed to give proper or adequate reasons for finding that the appellant had committed the offences in Turkey.

Hearing and submissions

24. The matter then came before me and both parties made submissions.

25. Mr Clarke raised two grounds of appeal. Firstly, he submitted that the judge had erred in her findings that the appellant's crimes in Turkey did not meet the threshold of 'serious' for the purposes of Article 1F(b). He submitted that the judge, in considering the Home Office policy guidance and the types of crimes referred to in AH, had taken a prescriptive approach at [59], which was inconsistent with the approach set out in the policy and set out by the Court of Appeal in AH. Relying upon the refusal letter at [32] and [33], he submitted that the sentences received by the appellant following the three convictions, namely seven years, five years and four years two months, were at the higher end of the sentences set out in the sentencing guidelines in the Turkish Penal Code, which indicated the seriousness of the offences. That was what the judge ought to have considered, rather than taking the prescriptive approach that she did. Secondly, Mr Clarke submitted that the judge had erred at [59] and [60] by looking at the appellant's post-offending conduct, by considering the findings of District Judge Devas on Article 3 and taking account of the appellant's mental health, and by carrying out a balancing exercise. Mr Clarke went through the Court of Appeal judgments in AH (Algeria) v Secretary of State for the Home Department [2012] EWCA Civ 395 (AH 1) and AH (Algeria) v Secretary of State for the Home Department & Anor [2015] EWCA Civ 1003 (AH 2) and the Upper Tribunal judgment in AH (Article 1F(b) – 'serious') Algeria [2013] UKUT 00382 in challenging the judge's approach.

26. Ms Chapman submitted that the Home Office policy, at page 25, was wrong to refer to a crime giving rise to a 12 month sentence as being a 'serious

crime' and that it was inconsistent with the UK's own jurisprudence, the ECHR jurisprudence and the UNHCR position, as set out in the AH judgments, and inconsistent with its own guidance at page 26. She relied upon the UNHCR Statement on Article 1F of the 1951 Convention July 2009 and the background note of 4 September 2003 which referred to serious non-political crimes covered by Article 1F(b) having to involve a "high threshold of gravity" and which she submitted formed the starting point of the judgment in AH. Whilst the appellant AH's sentence of two years' imprisonment was low, the nature of the offence was serious since it concerned involvement in terrorism, whereas it was the other way around in this appellant's case. In this appellant's case, the offences were remote and involved misuse of information systems with no direct harm to individuals, yet the sentences were high. Ms Chapman submitted that the Secretary of State had failed to meet the burden of showing that the crimes were of great seriousness and could only show that the sentences were high. As for the respondent's second ground, it was not accepted that the judge had imported a proportionality exercise. The judge was entitled to take into account the concerns about the safety of the appellant's convictions in Turkey even though she did not accept that they were as a result of malicious prosecutions. The concerns about the appellant's mental health were not only recent and the judge was therefore entitled to take that into consideration. The relevance of the appellant's UK offences was a matter raised by the respondent in the Respondent's Review produced for the hearing and the judge was therefore entitled to consider that.

27. With regard to the appellant's cross-appeal, Ms Chapman submitted that the judge had erred by failing to explain what weight, if any, she had attached to the reports of the appellant's Turkish lawyer Faruk Oztas and the expert Saniye Karakas. It was unclear what aspects she had accepted of their reports and what aspects she had not accepted. The judge had therefore failed to provide adequate, proper or clear reasons for not giving weight to the expert reports and she had accordingly erred in finding that the appellant had committed the crimes for which he had been convicted in Turkey.

28. Both parties then responded to each other's submissions and reiterated the points previously made.

Legal Framework

29. Article 33(2) of the Refugee Convention states:

> "2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

30. Article 1F of the Refugee Convention states:

> "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
> (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

31. Section 72(3) of the Nationality and Immigration Act 2002 sets out the test for a "serious crime"

> "A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if—
> (a)he is convicted outside the United Kingdom of an offence,
> (b)he is sentenced to a period of imprisonment of at least two years, and
> (c)he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence."

32. The Home Office Guidance "Exclusion (Article 1F) and Article 33(2) of the Refugee Convention" version 6.0 of 1 July 2016 states:

> "Length of sentence
> The length of prison sentence alone is not determinative of whether the claimant should be excluded under Article 1F(b). In AH (Algeria) v Secretary of State for the Home Department [2012] EWCA Civ 395, Lord Justice Ward noted, at paragraph 54, that:
>
> > Sentence is, of course, a material factor but it is not a benchmark. In deciding whether the crime is serious enough to justify his loss of protection, the Tribunal must take all facts and matters into account, with regard to the nature of the crime, the part played by the accused in its commission, any mitigating or aggravating features and the eventual penalty imposed.
>
> More important than the sentence is the nature and context of the crime, the harm inflicted, the part played by the claimant and whether most jurisdictions would consider it a serious crime. Examples include murder, rape, arson, and armed robbery. Other offences which may be regarded as serious include those which are accompanied by the use of deadly weapons, involve serious injury to persons, or if there is evidence of serious habitual criminal conduct. Other crimes, though not accompanied by violence, such as large-scale fraud, may also be regarded as serious for the purposes of Article 1F(b)."

Discussion

33. It was common ground between the parties that the relevant guidance for considering whether crimes committed in an applicant's home country were serious enough to justify exclusion under Article 1F(b) as being "a serious non-political crime" was as set out in the AH cases.

34. At [42] of AH 1, Lord Justice Sullivan referred to the threshold of seriousness for the purpose of Article 1F(b) as that described by the academic commentators quoted at [32] to [36], all of whom had emphasised the high threshold of gravity that was required. Those paragraphs included, at [36], the UNHCR's statement to the Grand Chamber in Bundesrepublik Deutschland v B and D (Cases C-57/09 and C-101/09) [2011] Imm AR 190 and were followed, at [37] and [38], by Lord Justice Sullivan's endorsement of the Grand Chamber's judgment:

> "[37]. The four questions answered by the Grand Chamber in B and D did not directly address this issue, but the Grand Chamber did say in paragraph 108 of its judgment:
>
> > "[108] Exclusion from refugee status on one of the grounds laid down in Article 12(2)(b) or (c) of Directive 2004/83, as stated in respect of the answer to the first question, is linked to the seriousness of the acts committed, which must be of such a degree that the person concerned cannot legitimately claim the protection attaching to refugee status under Article 2(d) of that directive."
>
> [38]…It is clear, therefore, that for the purpose of Article 12(2)(b) or (c) there must be an assessment of the level of seriousness of the acts committed, and the seriousness must be of such a degree that the offender cannot legitimately claim refugee status."

35. In AH 2, in concluding that there was no distinction between "serious" in Article 1F(b) and "particularly serious" in Article 33(2), Lord Justice Laws said at [35]:

> "I have already accepted (paragraph 26) that *Al-Sirri* and related texts serve to emphasise the necessary gravity of offences sufficiently heinous to exclude the perpetrator from international protection by force of Article 1F: "serious crime" certainly denotes especially grave offending. But I do not think that is a function of nice distinctions in French criminal law, or the presence or absence of the adverb "particularly"."

36. Judge Robinson referred to relevant parts of the judgments in AH, at [12] and [13], and subsequently at [59] of her decision. Her assessment of the seriousness of the appellant's crimes in Turkey, for the purposes of Article 1F(b) was, in my view, entirely consistent with the guidance given by the Court of Appeal and the academic commentaries and European jurisprudence adopted by the Court in that case.

37. It is Mr Clarke's submission that the judge had erred by adopting an erroneous, prescriptive approach to the question of whether the appellant's crimes were sufficiently serious. He referred in that respect to [59] of her decision, where she noted that the appellant's convictions did not involve violence and that there was no evidence that they constituted "large-scale fraud" or "serious habitual criminal conduct" and he submitted that that demonstrated that such an erroneous, prescriptive approach had been taken. Mr Clarke submitted that the Home Office guidance made it clear that lists of

examples of crimes were non-exhaustive and that the judge's approach was therefore inconsistent with the guidance. However, it seems to me that if, anything, it was the respondent's approach which was prescriptive. I agree with Ms Chapman that the respondent's view of the appellant's convictions was based on little or nothing more than the length of the sentences received for the three convictions in Turkey. Judge Robinson, on the other hand, adopted an approach that was consistent with a wider consideration, in line with Lord Justice Ward's findings at [54] of AH 1, where he said:

> "I certainly do not find it helpful to determine the level of seriousness by the precise sentence of imprisonment that may have been imposed upon the accused. Sentence is, of course, a material factor but it is not a benchmark. In deciding whether the crime is serious enough to justify his loss of protection, the Tribunal must take all facts and matters into account, with regard to the nature of the crime, the part played by the accused in its commission, any mitigating or aggravating features and the eventual penalty imposed. I would leave that decision to the good sense of the Tribunal."

38. Judge Robinson specifically referred to those findings at [59] and I disagree with Mr Clarke's submission that she did not actually apply the principles therein. The judge was well aware that the appellant's crimes had attracted sentences in excess of the two years set out in section 72 of the NIAA 2002, as referred to at page 25 of the Home Office guidance, but she went on to consider the following part of the guidance which she quoted at [57]:

> "More important than the sentence is the nature and context of the crime, the harm inflicted, the part played by the claimant and whether most jurisdictions would consider it a serious crime. Examples include murder, rape, arson, and armed robbery. Other offences which may be regarded as serious include those which are accompanied by the use of deadly weapons, involve serious injury to persons, or if there is evidence of serious habitual criminal conduct. Other crimes, though not accompanied by violence, such as large-scale fraud, may also be regarded as serious for the purposes of Article 1F(b)."

39. She was perfectly entitled to conclude that the nature of the appellant's crimes did not fall within the types or categories of crimes envisaged by the Court of Appeal in AH, or in the Home Office guidance, as meeting the threshold of a serious non-political crime justifying exclusion under Article 1F(b). I reject the suggestion that she was applying an unduly restrictive approach in reaching such a conclusion.

40. Likewise, I reject the suggestion that the judge imported a balancing exercise into which she placed considerations of matters unrelated to the crimes committed in Turkey. It is not the case, as the respondent submits, that the judge's reference at [59] to the appellant's offences in the UK was a consideration of post-offence events, or that the nature of the crimes in the UK was considered in terms of expiating his previous offending, contrary to the Court of Appeal's findings in AH 2. Rather, as properly explained in the appellant's Rule 24 response at [14], the judge was merely considering

whether the appellant's convictions in the UK had any bearing on the seriousness of the crimes in Turkey, by way of a response to the respondent's own view as expressed in the Respondent's Review at [6]: "*To add, the appellant committed similar offences in the UK and was convicted*". The same can be said of the judge's reference, at [60], to the statements of Nicola Babb and Robert Berg, which went to the same issue. As for the judge's consideration at [60] of the extradition decision and the appellant's mental health, I do not consider that that is suggestive of a proportionality balancing exercise, but rather that she was considering matters relevant to his convictions in Turkey. The guidance in AH 2 made it clear that importing extraneous matters by way of a proportionality assessment was erroneous and it was that guidance, as set out at [12], [13] and [59], that the judge applied. As to whether the judge conflated issues arising from the extradition decision, even if that is the case, I do not see that that has any material impact on the decision as a whole, given the otherwise cogent reasons provided by the judge for concluding that the seriousness threshold was not met. Those reasons were solidly based upon the relevant jurisprudence and guidance, and I reject the suggestion that they were not.

41. For all of these reasons I find that the Secretary of State's grounds are not made out. The judge's decision, that the respondent had failed to show that the appellant's crimes in Turkey met the threshold of serious non-political crimes for the purposes of exclusion under Article 1F(b), was one that was fully and properly open to her on the basis of the evidence before her and in line with the relevant guidance and jurisprudence.

42. On that basis there is no need to go further and consider the cross-appeal. However, I have done so, for the sake of completeness. I do not find the appellant's grounds to be made out. I agree with Mr Clarke that the challenge to the judge's decision, that the respondent had shown that the crimes had been committed in Turkey, was simply a disagreement with the weight she accorded to the evidence. There is no dispute that the judge gave consideration to the expert reports from Ms Karakas and Mr Oztas. The challenge is made on the basis that the judge failed to explain what weight she was giving to the two expert reports and failed to explain which parts of the reports were rejected and which parts were accepted. However, it seems to me that the judge did give sufficient reasons for according the reports the limited weight that she did.

43. Having myself considered the two reports from Ms Karakas, I note that the first report of 1 February 2021 addressed the matters of conditions in prisons in Turkey, treatment of prisoners and the fairness of judicial proceedings, in particular with regard to gay and Kurdish prisoners. The second report of 3 February 2021 provided information about the family of the person named "X" with whom the appellant claimed to have had a sexual relationship and the general plausibility of malicious prosecutions taking place. The relevant parts of the reports, specifically the second report, and the concluding opinion of the expert, were addressed by Judge Robinson at [51]. As the judge found at [50], Ms Karakas's conclusions were rather general and were not conclusive or

specific to the appellant's prosecutions and went no further than opining that it was possible that X's father had influenced the police and the judiciary. It seems to me that the judge drew as much as she could from the report, and I cannot see that she can be criticised for concluding that the weight to be accorded to it was limited.

44. As for the report from Faruk Oztas, the judge considered that at [52] of her decision. Curiously, I note that it appears to have been the same lawyer, Faruk Oztas, who produced a statement, at Annex B6, page 68 of the respondent's appeal bundle, in support of the appellant's previous claim as a Syrian national. I only mention that as an aside as it was not a matter noted or raised by either party and is of no relevance to the error of law question. On the evidence and submissions before Judge Robinson, it seems to me that she was fully entitled to conclude that Mr Oztas's report was of limited evidential value given that he had limited information available to him and was unable to provide any supporting evidence in relation to his assertions. Mr Oztas's involvement in the cases in Turkey was not made clear and he confirmed that he was not at the hearings of the three cases which were the subject of the extradition request. He did not give a focussed answer to the questions put to him, in particular question 3, but answered by way of opinion rather than specific information, as was the judge's finding at [52]. The judge was not bound to accept Mr Oztas's unsupported assertions that the prosecutions against the appellant were malicious and she was entitled to conclude as she did. Again, I cannot see that there was much more that could be expected of her by way of reasoning in that regard.

45. Having given careful consideration to the expert reports at [49] to [52] and having previously, at [48], considered matters in the appellant's favour, the judge went on at [53] to consider the background evidence in the Home Office Country Policy and Information Note for Turkey before drawing together all the evidence at [54] and reaching her conclusions. The weight that she gave to the evidence was a matter for her and was properly explained. As such, it seems to me that she was perfectly entitled to conclude that the respondent had adequately demonstrated that the appellant had committed the crimes for which he was convicted in Turkey and that the appellant had failed to demonstrate that the prosecutions were malicious. I find no errors of law in her decision in that respect.

46. For all of these reasons I find no merit in the grounds of challenge from either party and I uphold the decision of the First-tier Tribunal.

DECISION

47. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to allow the appeal stands.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 10 May 2022